

# ALLEGATIONS OF SEXUAL ASSAULT AT THE U.S. AIR FORCE ACADEMY

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Allegations of Sexual Assault A

## HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS

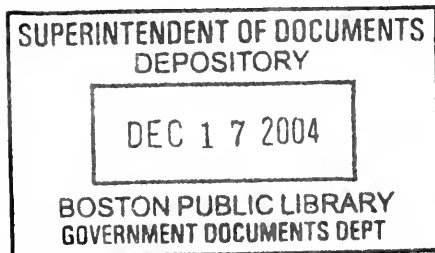
FIRST SESSION

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MARCH 31; SEPTEMBER 24, 30, 2003

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Printed for the use of the Committee on Armed Services





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# **THE U.S. AIR FORCE INVESTIGATION INTO ALLEGATIONS OF SEXUAL ASSAULT AT THE U.S. AIR FORCE ACADEMY AND RELATED RECOMMENDATIONS**

**MONDAY, MARCH 31, 2003**

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC.*

The committee met, pursuant to notice, at 4:05 p.m., in room SH-216, Hart Senate Office Building, Senator John Warner (chairman) presiding.

Committee members present: Senators Warner, McCain, Allard, Collins, Chambliss, Levin, Reed, Dayton, Clinton, and Pryor.

Committee staff members present: Judith A. Ansley, staff director; and Cindy Pearson, assistant chief clerk and security manager.

Majority staff members present: Charles W. Alsup, professional staff member; Gregory T. Kiley, professional staff member; Patricia L. Lewis, professional staff member; Scott W. Stucky, general counsel; and Richard F. Walsh, counsel.

Minority staff members present: Richard D. DeBobs, Democratic staff director; Gerald J. Leeling, minority counsel; and Peter K. Levine, minority counsel.

Staff assistants present: Michael N. Berger; Jennifer Key; and Nicholas W. West.

Committee members' assistants present: Christopher J. Paul, assistant to Senator McCain; Douglas Flanders and Jayson Roehl, assistants to Senator Allard; James P. Dohoney, Jr., assistant to Senator Collins; Clyde A. Taylor IV, assistant to Senator Chambliss; Elizabeth King, assistant to Senator Reed; William Todd Houchins, assistant to Senator Dayton; Andrew Shapiro, assistant to Senator Clinton; and Andy York, assistant to Senator Pryor.

## **OPENING STATEMENT OF SENATOR JOHN WARNER, CHAIRMAN**

Chairman WARNER. Good afternoon, gentlemen. We welcome our witnesses today.

Given the importance of this hearing, the Chair offers to all Senators present an opportunity to make an opening statement. I will proceed with mine to be followed by Senator Levin, and then other colleagues.

We meet today to receive testimony on the U.S. Air Force investigation into allegations of sexual assault at the Air Force Academy and related recommendations, which I understand the Secretary

and the Chief of Staff are prepared to share with the committee in open session today.

I want to start by recognizing the contribution by our colleague, Senator Allard. He has done noble effort in this case, bringing to the attention of the Senate and, indeed, the Department of Defense, the serious and disturbing allegations at the United States Air Force Academy. Since January of this year, Senator Allard and his staff have provided an open line of communication for young women, present and former cadets at the Academy, and their families, to bring information forward on this incident, series of incidents. He has also ensured that the investigative efforts underway, both Air Force and Department of Defense Inspector General (DODIG), will be fully responsive to these concerns.

Throughout the proceedings, I have joined with Senator Allard in sending a number of letters to the Department of Defense and in meeting with Pentagon officials, indeed the Secretary and the Chief of Staff on a number of occasions.

So I compliment you, Senator, for your work in this matter thus far and your continued interest.

On being informed by Senator Allard some 8 weeks ago of the allegations of sexual assault at the Air Force Academy, Secretary Roche then assembled a team of investigators, led by the Air Force General Counsel, to review the Air Force Academy's command climate and pertinent policies and procedures regarding the handling of sexual assault cases. The Air Force IG and also the DODIG were asked to review individual cases and conduct interviews and fact finding.

I believe that Secretary Roche and General Jumper reacted very quickly to the expressions of congressional concern they received and they have made, and are making determined efforts to obtain all relevant information and to provide this committee and Congress as a whole with their current recommendations as to how to prevent a reoccurrence of these allegations in the future.

We were, as a committee, promised a complete report on the Air Force General Counsel's investigation by today, 31 March. We are now informed it will be forthcoming shortly.

In early February, I contacted Charlie Abell, the Deputy Under Secretary of Defense for Personnel and Readiness, and asked that he monitor the progress of the Air Force investigation and ensure the U.S. Military Academy and U.S. Naval Academy policies and historical data were also evaluated; in other words, all three academies. That is predicated on my own experience when in the Department of Defense. If we had a problem at one academy, we shared it with the Secretaries of the other military departments and the Chiefs of Staff. Then that way we worked to ensure that there was no spreading of the problem elsewhere, the sharing of the benefit, if there are any to be derived, from these incidents to preclude it in the future at all three academies.

Additionally, Senator Allard and I, along with Senator Collins, in her capacity as Chair of the Governmental Affairs Committee, contacted Joseph Schmitz, the Department of Defense Inspector General, requesting that he participate in the investigation and ensure an independent review of the Air Force efforts.

I have been pleased, Secretary Roche, with your response to these initiatives, and your cooperation with OSD and the DODIG in ensuring a complete and thorough investigation.

Based on the facts received to date by the members of this committee, there appears to be an attitude towards women cadets by successive commanders at the Air Force Academy, which attitude fails to recognize fairly and properly allegations and concerns which in good faith were repeatedly brought to the attention of the various officers in charge by female cadets.

Some facts give rise to the conclusion that a climate existed that was actually hostile to female cadets. Some facts provide a basis to support a conclusion that the promise of a safe and secure living and working environment for female cadets and, in some instances, female visitors to the Academy, was undermined.

The seriousness of this case is a direct result of how long this climate of inaction has persisted. Following the abuses of the Navy Tailhook Association Symposium in 1991, following the sexual abuse of female recruits at the Army's base at Aberdeen in 1996, following determined efforts by DOD and all Services to correct these problems, there is a legitimate question as to why the leadership of the Air Force Academy allowed these situations to persist, given that background.

Approximately 8 years ago, in 1995, Department of the Air Force leadership did recognize the potential for problems with regard to sexual harassment and sent the following message to all Air Force commands—this was by the Secretary—“Any conduct, in any unit, which creates a disadvantage based on race, ethnicity, or gender will not be tolerated. Malicious or inappropriate behavior as well as different training standards cannot be permitted. Any indications that such behavior is occurring within a unit will prompt an immediate investigation. Those responsible for such action as well as commanders who fail to correct these problems will be held accountable.”

The question before this committee, the question before the American public, is why this message was not heeded by subsequent leaders at the Air Force Academy? Every Member of Congress, all 535, are proud to work diligently in encouraging young women to seek nominations to the Air Force Academy. The concerns in Congress are not just before the oversight committees, such as this one, but in the minds and the hearts of every single member of the United States Congress.

While we await the outcome of investigations into these allegations of alleged criminal behavior, we also await the Department of the Air Force actions with respect to accountability for those who have failed in command and allowed an environment in which such behavior was tolerated.

I repeat the last sentence of the 1995 message from the former Secretary of the Air Force and former Chief of Staff of the Air Force in their message, “Those responsible for such action as well as commanders who fail to correct these problems will be held accountable.”

I draw the attention of our witnesses, Secretary Roche, the Chief, to the quote in your press release of just a few days ago, March 26, and I quote it, “As the problems regarding sexual assault alle-

gations predate the current leadership, we do not hold Generals Dallager or Gilbert responsible."

I pose two questions: Is this quote consistent with the Air Force message of 1995? How could Department of the Air Force leadership have reached this conclusion here on March 26th prior to the completion of any of the three ongoing investigations?

In a press conference last week, Secretary Roche, you likened your actions in removing four senior officers at the Academy to a corporation merely bringing in its own leadership team. With all due respect, sir, the Air Force is not a corporation, and what is at issue here are time-honored principles of military leadership and accountability, and whether or not they were applied.

These principles demand a deliberate, critical examination, and an appropriate measure of accountability, when a command fails in some key aspect of its mission, particularly when personnel charged to a commander's care have been harmed. This committee and the men and women of the Air Force expect these principles to be applied in this case, and for commanders to be held accountable for any failures of command.

Reserving judgment in these matters until the Air Force IG and DODIG complete their investigations would have been, in my own experience, the more prudent and appropriate course of action for the leadership of this department.

With respect to the response of this committee, more fact finding and analysis is necessary in order to determine whether the actions taken, or not taken by the Superintendent, Commandant, and their subordinates, were in keeping with the high, time-honored standards of command.

In the meantime, our focus today and in the future must properly be on changing the culture at the Air Force Academy so that the young women currently in the Cadet Wing, and those entering the Academy this summer, can be assured that all cadets, men and women, will have a safe environment in which to pursue their hopes and dreams of becoming Air Force officers.

Senator Levin.

#### **STATEMENT OF SENATOR CARL LEVIN**

Senator LEVIN. Thank you, Mr. Chairman. First, let me thank and commend you and Senator Allard for your continued leadership and your strong involvement in the critical issue that is before us today.

Sexual misconduct at the Air Force Academy is tragically not a new issue, as our Chairman has pointed out. Following a series of reported rapes in 1993, Lieutenant General Brad Hosmer, who was then the Superintendent, said, "We have a problem at the Air Force Academy. This problem has existed for some time."

His comments are very similar to Secretary Roche's public comments about the allegations now under investigation. General Hosmer attempted to deal with the problem by instituting programs to educate cadets on the conduct expected of military officers and by changing reporting requirements to encourage cadets to report sexual assaults. Despite these measures, the Academy received 13 more reports of sexual assault during the next 8 months.

The General Accounting Office issued reports in January 1994 and March 1995 on sexual harassment at the three Service academies. While, of course, sexual harassment includes a lot more than sexual assault and rape, the GAO findings are still relevant in our consideration of how the Air Force Academy deals with allegations of sexual misconduct.

In the 1994 report, the GAO found "between half and three quarters of Academy women experienced various forms of harassment at least twice a month."

In the 1995 report, the GAO reported that "the majority of Academy women reported experiencing at least one form of sexual harassment on a recurring basis in the academic year 1993 to 1994."

Data contained in the 1994 report shows that between 1988 and 1993, cadets at the Air Force Academy reported 41 incidents of sexual misconduct. During the same timeframe, midshipmen at the Naval Academy reported 26 incidents, and cadets at the Military Academy reported 40 incidents. Now, a decade after General Hosmer acknowledged a sexual misconduct problem at the Air Force Academy, we learn that there were at least 54 reports of sexual assault or rape at the Air Force Academy during the last 10 years. We have also learned that during the last 5 years, the United States Military Academies received 5 reports of rape and 13 reports of other sexual assault; and during the last 3 years, the Naval Academy has received 12 reports of sexual assault and/or rape.

It is incredible that the pattern persists of victims of assaults being discouraged from reporting the incidents, that their complaints were not fully investigated, they were ostracized by other cadets, and that they, the victims, were punished by the Academy for infractions brought to light only because they reported that they had been assaulted.

I join in the Chairman's questions about a commander's accountability. I think these are extremely significant questions and go to the heart of the matter.

I will have a number of questions that I will raise with the witnesses regarding that issue of commanders' accountability.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator Levin.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I think it is pretty obvious that your statement and that of Senator Levin are very important here, because people are held accountable in the military and other aspects of life. When they are not held accountable, then obviously those who are supposed to be holding them accountable are not doing their job.

Secretary Roche gave a press conference recently that had some of the most incredible evasions of responsibility that I have seen in more than 40 years of being involved in the military and in oversight of the military as a member of this committee:

Mickey Anderson with the L.A. Times: "Have you in any way reprimanded or disciplined at all the leaders who were not honorable? What do you say to the critics who say you are going too easy on these people? You just said

a second ago that these people may have been responsible."

Secretary Roche: "The current group cannot be responsible for everything that occurred in a 10-year period and certainly over a period longer than 10 years. To hold someone accountable means that there are two sides to a story, and they have a side as well. We have looked at it. We know that under the circumstances, they might not have been more—they might have been more clairvoyant. They may have been sharper. There may have been a survey they should have acted on. But to hold them accountable per se with what we now know, no."

Question: "And you are continuing to leave some of these people in leadership capacities, their new jobs involve leadership, so I presume you trust them."

Secretary Roche: "First of all, there is no reason not to trust them. One is retiring. One is coming to be a special assistant here. I am not sure of where the other two—but one of the four nobody has accused of anything. As a matter of fact, he is well liked. But, you are trying to get back to a couple of people saying they are the whole problem. They are not the problem. Let us remember cadets commit assaults against cadets."

One of the more remarkable statements I have ever heard, Mr. Chairman, in my more than 40 years of involvement with the military. It is abundantly clear that the Secretary of the Air Force has been—he has proved himself totally incapable of handling this issue.

In 1993, Mr. Chairman, there was a problem at the Naval Academy. We appointed an outside committee. That was appointed with nine outside civilians that were appointed by the Board of Visitors, and the Secretary of the Navy and examined the honor concept.

According to former superintendents, this critical report has had an everlasting and positive effect. It is clear now that since there has been no assignment of responsibility except for "cadets commit assaults against cadets" that we need an outside board to investigate and to recommend whatever remedial action needs to be taken. The Secretary of the Air Force is either unable or unwilling to address this issue, and that is abundantly clear.

I thank you, Mr. Chairman.

Chairman WARNER. Senator McCain, was that board appointed by the then Secretary of the Navy?

Senator MCCAIN. The Board of Visitors and the Secretary of the Navy.

Chairman WARNER. All right.

Senator MCCAIN. This would have to be done by the Secretary of Defense clearly, since the Secretary of the Air Force has, as I say, rendered himself incapable.

Chairman WARNER. Then that board reported back—my recollection is we brought in Admiral Larson.

Senator MCCAIN. Yes, sir, we did.

Chairman WARNER. He did a wonderful job of straightening that problem out.

Senator Reed.

Senator REED. Thank you, Mr. Chairman. This is a very serious issue, and I think everyone is treating it with the seriousness and the severity it deserves because it is not just about the conduct of cadets, but it is the lessons that they take into the Air Force, or the Army, or the Navy.

We were briefed by the Secretary and the Chief of Staff about steps that they are taking. I suspect they will allude to those steps today, but I just want to underscore the seriousness of this issue that goes way beyond the boundaries of just Colorado Springs. It goes to the nature of the leaders of the Air Force, and I would say also the other Services, because as Senator Levin pointed out, there are situations that arise on other campuses.

Thank you, Mr. Chairman.

Chairman WARNER. We thank you for your comments because we view you, as one of the members of our committee, again, as Senator McCain, a graduate of the Naval Academy, you are a graduate of West Point, so your views hold a lot of merit, as do those of Senator McCain.

Senator Allard, we commend you as a committee on the steps you have taken in this matter thus far.

Senator ALLARD. Thank you, Mr. Chairman. I just would say, your leadership from the beginning of this crisis has been exemplary. Over the last 3 months, you have worked closely with me and Senator Collins and others to address the very serious problems at the Academy. Your interest and attention to this matter have made a difference.

I appreciate the willingness of Secretary Roche and General Jumper to appear before us today, particularly during this difficult time. The U.S. Air Force has performed brilliantly over the skies of Iraq. Thanks to the outstanding work of our airmen, we now have near total air supremacy. I also want to commend our personnel at Air Force Space Command. They play a major role in our current military operations.

Our forces on the ground know that they can count on their colleagues in the air and space to provide them with the support they need when they need it. This remarkable achievement is a testament to the Air Force's rigorous training and superb leadership. Our Air Force personnel are top-notch, the best in the world, and have proven time and time again that they are capable of conducting tough missions over unfriendly skies.

The U.S. Air Force Academy plays a critical role in sustaining and building upon this excellent cadre of personnel. The Academy's core values of "Integrity First, Service Before Self, and Excellence in All We Do" have built character and a respect for human dignity in each cadet. The school's honor code has helped transform incoming students into highly skilled, professional officers capable of leading dozens of enlisted servicemen and non-commissioned officers.

Since its first graduating class in 1959, the Academy has produced thousands of Air Force officers, including over 200 that have become general officers, who have served our country with honor and distinction. The school's contribution to our country's security is impossible to measure.

I believe so strongly in the mission of the Air Force Academy that at every opportunity, I recommend it to high school students around the State of Colorado, as do my colleagues on this committee who are equally supportive of the Academy.

The Academy is built on honor and character, and is seen as a critical national asset. The allegations of sexual assault and rape at the Academy tarnish the school's reputation and reflect poorly on the officers it produces. This crisis goes straight to the core values of the institution.

Let us be honest: This has been a catastrophic failure of leadership and process. We must learn from these mistakes and strive never to repeat them. We must work together to address the current climate of fear at the Academy in a manner that is deliberate and unambiguous.

Since last December, over 40 current and former cadets who were allegedly sexually assaulted or raped have approached me and my staff. Some of these cadets say they were punished for drinking or for having sex in the dormitories after reporting sexual assault or rape to Academy officials. Others report that key evidence, such as rape kits and investigative reports, was lost by the Academy's investigative unit. Most troubling of all has been the Air Force's refusal to provide confidentiality to those who wish to come forward.

I am saddened to report that only 2 of the over 40 cadets that have approached my office have expressed a willingness to discuss their case with the Air Force. Many believe that the Air Force will punish or blackball them should they come forward. Clearly, a climate of distrust is making the process of addressing the problems at the Academy more difficult. A credibility gap now exists that may take months, even years, to bridge.

The lack of trust between the Air Force and its cadet corps highlights the importance of the investigation by the Department of Defense Inspector General (DODIG). The DODIG is seen as an impartial investigator that is willing to listen to the concerns of cadets that were allegedly sexually assaulted or raped. Many of the cadets that have approached my office seem to be willing to discuss their case with the DODIG. It is my hope and expectation that the DODIG will quickly seize upon this opportunity. It is also imperative that the Air Force cooperate with the DODIG as well.

I appreciate the way Secretary Roche and General Jumper have approached these allegations. They were quick to recognize the severity of the problems at the Academy and immediately ordered a high-profile investigation. I and many of my colleagues will be very interested in reviewing the results of this investigation once it is completed.

Secretary Roche and General Jumper also recently announced several actions that will hopefully bring the process of addressing the cultural problems at the Academy. Replacing the Academy's current leadership will be key to ensuring that these new measures would be implemented without distraction.

The lack of attention paid by the Academy's leadership to the annual cadet climate surveys, which were recently provided to my office, was particularly inexcusable. Each of these annual surveys,

going back to 1998, clearly indicates a pervasive problem with sexual assaults at the Academy.

Mr. Chairman, I want to let you know that I plan to offer legislative language that will require the Secretary of the Air Force to report to this committee for the next 5 years on the number of reported sexual assaults and rapes, the number of prosecuted cases, and actions taken by the Air Force to address these sexual assaults and rapes. I believe it is imperative that we closely monitor this situation over the next several years.

Again, I thank our witnesses, and I look forward to their testimony and to the question and answer period.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator. That language would be considered in the course of the annual authorization.

Senator ALLARD. I hope to bring it forward at that time. Thank you.

Chairman WARNER. All right. Thank you very much.

Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman. I want to thank you, Mr. Chairman, for bringing this hearing to the public arena so rapidly and also for your leadership in getting us right through this regardless of where it leads. Thank you very much.

Senator Allard, also, who is the spirit of this, along with you, I commend you also for your leadership.

I think, Mr. Chairman, you and the ranking member, Senator Levin, and Senator McCain, and others who have spoken here have covered many of these areas very well. I would just say briefly, I think Senator Allard said it is a tragic juxtaposition that we have right now a war in which we are seeing the best of the Air Force and its courageous pilots and others involved in that effort, and now we are dealing with this matter which really, I think, is the worst of the Academy.

I have been also involved in nominating two women who have been admitted to the Academy, and I feel very personally responsible and alarmed even though—and I do not know their outcomes—but to think that we are nominating or sending young women to the Academy to go through these kinds of experiences and humiliations and then have their lives, if not their careers, seriously impaired is, just to me, abhorrent. The fact that it has gone on so long without any attention at the very top—and I recognize that this preceded your arrival there—but is just to me just shocking, and the Armed Forces have set in the past very high standards for America's young men and women.

Its acceptance of all Americans into the Academy, into its ranks, they have played a very crucial role in integrating these men and women into American society and in the past in its acceptance and integration of racial minorities and others. It has set the lead for our society in these important respects. In this case, it is clearly not only lagging the country, but it is proceeding in exactly the wrong direction.

The number of incidents that have occurred in the last 8 or 10 years, the fact that none were reported for the previous 20 years since women were admitted to the Academy, indicates to me that

this is probably the tip of the iceberg in terms of what has transpired there over these years.

The victims have been punished, and the perpetrators in many cases have been promoted, which is sending exactly the wrong message and creating an ethic which is antithetical to the values of this society, which the Air Force is tasked to defend and which it has done so courageously in the past, and is doing so today.

I would say that the change in leadership is a necessary beginning, but this will not be completed until there have been fundamental changes made in the structure of the Academy and the content of its activities and its life and until the victims, to the extent possible, every one of them, have had their situations, their careers, if they are still in the Air Force, remedied and that they have not been sanctioned in ways that have lasting effects on their careers; and if they have left the Service, an effort has been made to remediate their situations, and ensure the violators have been punished.

I would—reflective of what I have also read in some of the views that are under—still current even as regards this inquiry and these actions that have been taken, I would support what Senator McCain said about the need for an outside investigation. I do not believe that it is possible that this will be completed to my satisfaction, if it is just an inside inquisition.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator. I, likewise, am going to take to heart Senator McCain's recollection of what transpired when both of us were serving on this committee, all of us or many of us, several years ago.

Actually, it was Deputy Secretary of State Armitage who headed up that panel.

Secretary ROCHE. Headed it up, yes, sir.

Chairman WARNER. But I think we should take a look and see what the IG of the Department of the Air Force, and the IG of the Department of Defense conclude. I know that the Deputy Under Secretary of Defense, Charlie Abell, is gravely concerned about this matter.

Senator COLLINS, we thank you for your work on this in your capacity as Chairman of the Governmental Affairs Committee. You have a special interest in the IG investigations. I commend you for your work.

Senator COLLINS. Thank you very much, Mr. Chairman. Let me thank you and Senator Allard for your leadership in examining very closely the response of the Air Force to the many reports of sexual assault at the Air Force Academy.

It has always been one of my proudest honors to nominate young men and women to attend our Service academies. I have always thought in doing so that I was affording these young men and women an extraordinary opportunity to receive an excellent education while serving their country. I never dreamed that in doing so, I was putting young women at risk for sexual assault. That troubles me deeply, and it angers me.

When I hear Senator Allard talk about year after year the cadet climate survey revealing that women had been assaulted, I do not understand how that information was ignored. Indeed, in 1 year,

some 167 cadets reported sexual assaults, and the response seems to be that in the next year they deleted the question. That is very troubling to me.

It angers me that it has taken a press report to finally prompt the Air Force to take action to deal with these allegations, after these allegations had surfaced year after year in these surveys, as well as in the reports of the young cadets themselves.

Even now, there appears to be a reluctance to hold Academy leaders accountable absent congressional pressure to do so. It should not take a press expose and congressional hearings to force the Air Force to deal with this serious problem. I am shocked and appalled that that is apparently what it took to focus the attention of the leaders of the Academy and the leaders of the Air Force on this problem.

I do not doubt the sincerity of the Secretary and the General when you tell us that you are committed to solving this problem, but I do not understand why it has taken years for these allegations to be taken seriously and for the climate to be changed, and for people to be held accountable. That is why I have reached the conclusion that the Air Force no longer has the credibility to deal with this issue. I have pressed from the beginning for at least an investigation by the Inspector General of the Department of Defense as well as congressional hearings to delve into this because, based on the evidence I have seen, I have lost confidence in the Air Force's ability to investigate itself because it should have done so years ago.

Mr. Chairman, I thank you for holding this hearing and for your leadership and the leadership of Senator Allard and many others on this committee.

Chairman WARNER. Senator, I know in your own committee you will be looking at aspects of this case.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. I do not have anything to say other than to echo everything that has been said. I agree completely and I look forward to hearing from the witnesses today.

Chairman WARNER. Senator Chambliss, you have an equal responsibility to us as chairman of the Personnel Subcommittee. Ordinarily, these matters originate in your subcommittee and, if necessary, come before the full committee. But in this instance, we felt it imperative to do it with your concurrence.

Senator CHAMBLISS. Mr. Chairman, I appreciate that too, because it does show the level that this issue has risen to from the standpoint of how you and our colleagues are treating this issue. You are treating it with all the due seriousness with which it needs to be treated.

I went home this weekend thinking that I would spend 30, 45 minutes in preparation for this hearing. I took all of the news accounts, all the correspondence home with me, and I wound up spending several hours reading, re-reading some of it.

Mr. Secretary and General Jumper, I will have to tell you I am just totally—not just appalled at what has been going on for apparently about a decade at the Air Force Academy, it is a lot more than that. There appears to be an attitude at the Air Force Acad-

emy that not just condones what has been happening, but it just seems like it is part of the accepted life, if you believe the accounts. I do not believe everything I read in the press. But I know you two gentlemen very well, both of you. I know that you would never condone the type of activity that is obviously going on out there.

I am not sure where we need to go with this. You gentlemen have jumped on this early, and I know you have some recommendations, some things you have already done, some other recommendations you are going to make, but I tend to agree with Senator McCain that we have to bring in somebody from the outside to tell us where we need to go.

The one other thing, Mr. Chairman, that concerns me is the fact that the leaders in the United States Air Force usually come from the Academy. If this type of activity has gone on at the Academy, and every cadet must know it has been going on, and they just have to, then what has been going on in the Air Force?

That really concerns me about where we are. I think that this issue may need to be broadened beyond just the Air Force Academy, West Point, and Annapolis into some other areas, which I will look forward to discussing with you and other members of the committee. I thank you.

Chairman WARNER. Thank you very much. We will now hear from our witnesses.

Mr. Secretary.

**STATEMENT OF HON. JAMES G. ROCHE, SECRETARY OF THE AIR FORCE; ACCOMPANIED BY HON. MARY WALKER, GENERAL COUNSEL, UNITED STATES AIR FORCE**

Secretary ROCHE. Thank you, Mr. Chairman, Senator Levin, members of the committee. We appear before you today to report on our agenda for change in the United States Air Force Academy as a result of complaints regarding incidents of sexual assault there and our response to those complaints.

Mr. Chairman, shortly after I became the Secretary and General Jumper became the Chief, we started to spend more and more of our time looking at the Air Force Academy, including issues of recruited athletes, curriculum—we changed the curriculum—altered how to recruit athletes, spent a year looking at the honor system and had it revised so as to make it a more effective system.

We are appalled at what we have found, and I do not think anyone should think that we have not been. We are both appalled and embarrassed on behalf of our country for what we have found.

Since January of this year, we have engaged in a comprehensive review of the investigative procedures, disciplinary processes, and overall climate at the Academy. Our focus throughout has been on fulfilling our goals of educating, training, and inspiring Air Force leaders of the highest character and integrity, ensuring the safety and security of every cadet, and enhancing the trust and confidence of the American people in the Academy. We also want to make sure we do not graduate and commission any criminals who have committed crimes while at the Academy. We have said that over and over.

It is still a superlative institution and has graduated many fine officers. We believe that the proportion of the Academy in any given class who has been a problem for the other cadets is small.

We also share in the sense of why the larger group of cadets did not know more about this and why, in many cases, they did not act themselves. We have tried to think through and understand why leaders at the Academy, for at least the last 10 years, but certainly—I agree with Senator Dayton—since this goes back many decades, why they came to the views that they did.

We have both read the summaries of each of the cases that have come forward and have tried to base our recommendations on those. This issue came to us in January as a result of an anonymous e-mail.

Chairman WARNER. What total number of cases is that? That is an important statement you just made.

Secretary ROCHE. We went back only to 1993, sir. That is 54, 56 if you add two new ones. Senator Dayton is quite correct. Up until about 1992, there were none reported, which we found to be extraordinary that there would not be a report. The issue then blossoms in 1993, and measures at—

Chairman WARNER. "Blossom" is not a good word.

Secretary ROCHE. Excuse me.

Chairman WARNER. Try again.

Secretary ROCHE. The issue comes to light and is more explosive when a number of cadets complain, and General Hosmer, who was the Superintendent at the time in the Air Force, then instituted a number of actions which they believed would address this problem.

We, then, in our investigation pick up from 1993 so as to not have any intervening years. In other words, it is not just this year or the last year or 2, but we wanted to go back in more depth. We were able to contact the author of an e-mail that came to us in January that was sent to us, as well as to some Members of Congress, including Senator Allard. We asked her if she would be willing to come and speak to us. She did, and also brought another former cadet as well. What they had to tell us raised serious concerns.

Based on these reports, we chartered a working group in January under the leadership of the Air Force General Counsel, the Honorable Mary Walker, who is with me today. While the preliminary report is available and we can give it to you, Mr. Chairman, the completed report should take another 2 weeks, while they collate a number of documents they have just received and sharpen each of the points.

In our charter of the team, we asked them to undertake a comprehensive review of the Air Force Academy program and practices to deter and respond to sexual assault incidents and to report their findings with respect to responsiveness, effectiveness, and fairness of our current programs.

Based on the preliminary report, our own personal involvement, interaction with people at the Academy and elsewhere and former officers, and the need to prepare to accept a new class in less than 90 days, we decided to act and issue the changes we issued last week. If needed, we have said we would issue additional changes.

Separately, we asked the Air Force Inspector General to review any case about which an alleged victim complained or about which

the first investigative group found something that deserved a more in-depth look.

When the DODIG was asked to join, we had hoped they would have taken over all of the cases so as to ensure that there was no sense of the Air Force covering anything up. We tried to do a climate look very quickly and to get into a much broader look, including how faculty deal with students across the board, as well as these particular measures. With regard to individual cases—since so often these are cases of—that cannot go all the way to court-martial, there is insufficient evidence; and because there are two sides to the case, we wanted to have a very objective look. The DODIG is working with the Air Force IG to do a dispassionate, independent look.

We have benefitted greatly from congressional input, especially members of the Air Force Academy Board of Visitors, including Senator Allard, and you, Mr. Chairman, have been especially helpful in pointing me in various directions as we have tried to do this. There have also been members of the House who have done it.

Both General Jumper and I went out to the Air Force Academy to make it clear from both of us that we will not tolerate in our Air Force, nor in our Academy, those who sexually assault others; those who would fail to act to prevent assaults; those who fail to report assaults; or those who would shun or harass any cadet who has the courage to report incidents of criminal behavior.

The preliminary findings, sir, in the report, which we can give you, they include such things as: there are significant indications that the primary value among many cadets is loyalty to each other, rather than loyalty to values of our Air Force and values of our country in many respects. In other words, they will protect each other even when they know of instances where they should report them.

There have been repeated indications through cadets, faculty, and staff interviews indicating cadet unwillingness to report fellow cadets even for criminal behavior including sexual assault. Interviews suggest that this loyalty manifests itself in a fear of ostracism if they appear to be disloyal to the group, and they appear to believe that reporting is inconsistent with the culture that says cadets are supposed to support one another.

But we also noted that the processes we use to encourage sexual assault reporting, processes implemented in 1993, some of them have had the unintended effect of impeding or preventing altogether the investigation of reported assaults, and remove the process from the chain of command.

We have verified that prior to the completion of some OSI investigations, at least some cadet victims have received notice of discipline action for violating cadet regulations, where the behavior arose from prohibited activity related to assault complaints.

Now, we do this almost exactly the way the Naval Academy has done it. However, it appears to be a much greater problem at the Air Force Academy. We believe part of this problem has been a poor feedback loop to the victim so that the victim knew what was going on. That has come from a misunderstanding of a legal position having to do with the protection of privacy of the accused that can be easily fixed.

Our overall sense, and this we are not proud to say, is that a female airman first class on an Air Force base has a far better support structure if a problem arises, a far better process in the chain of command to deal with the problem than a female cadet at the Air Force Academy. That needs to be changed.

We have noted that there have been definitional problems. The Academy has used a different definition of "assault" than has been used at our Air Force bases. For instance, there is confusion as to the role of alcohol in giving consent, whether consent can or cannot be given if someone feels they are alcohol impaired. The problem is, under the law, alcohol impairment is a range of things, not a blanket zero one. There may have been misunderstandings on the part of a number of the cadets.

At the same time, over the course of the last 2½ months, one of the things that has struck General Jumper and me is the number of women officers who we know professionally, who would stop one or the other of us and say, "I have never told anyone before, but this is what happened to me."

It has driven us more than these particular cases, and in fact, these go clearly over a very long period of time since a number of these officers are now quite senior. We agree that no person, no woman should have to undergo some of the things that they have had to bear with in order to become an officer in our Air Force. That is wrong.

We have become aware of other aspects of the Academy which we believe contribute to the overall climate at the Academy that need to be changed. The cadets are learning the wrong things about the role of athletics, about the role of sexual humor, about the role of what we are teaching male cadets that is inimical to their relationships with the female cadets.

If I may, Mr. Chairman, before turning it over to General Jumper, at least make our position clear on the issue of replacing the leaders. I believe I have read every or at least a summary of every case. I have worked with these officers. One has only been there 18, 19 months, and the other has been there—

Chairman WARNER. Let us identify them and give them periods of time here.

Secretary ROCHE. Yes. General Gilbert is in his 19th month right now. General Dallager has been there 3 years. General Gilbert is the commandant and the officer responsible for administering discipline.

I have spoken with the former Chief of Staff of the Air Force. General Gilbert was charged specifically when he went out there to deal with disciplinary issues having to do with a rather extensive set of complaints and allegations in cases involving drugs, and so he has been a tough disciplinarian.

When I have looked over the cases and looked at both sides of the cases—and before asking the Inspector General to look to see if there is more that we do not see—and in discussions with the General Counsel in the preliminary review and people on her team, the sense was that while these officers should be replaced, that due process suggests that there is nothing about which you can accuse them of the last 18 months, especially the last 18 months, that has

not been in place for a long time, and the fact that they were trying to change.

Now, they were not putting enough rudder into it, not doing enough. We felt that we had to give them very explicit sets of directions in order to do more. But it is not that these men were callous, Mr. Chairman. It was not that they were not trying. In fact, in the cases that came up in the course of General Gilbert's tenure of cadet-on-cadet sexual assault, there were four. Of those four, three are still open and one case was disposed of.

In many cases, he tried to do things. He tried to take cases to court-martial, only to be told by the judge advocates that there was insufficient evidence to go to court-martial. Whenever he could, if there were administrative reasons to discipline a cadet, he did, including having cadets disenrolled.

He also took action against a cadet who had committed an off-base crime where the local district attorney would not take action. Under the Uniform Code of Military Justice, General Gilbert and General Dallager did take the individual to court-martial. The individual is currently serving time in jail for the assault against a civilian female.

So our sense was that while something may come up, and we made it clear later on in that same press conference, that if something came up in the Inspector General's look that we could not see, we would go back and hold any officer accountable. With what we saw, and based on what the General Counsel was able to tell us about the investigation to date, there was plenty of reason to remove these officers so as to have a fresh team of leaders—and it may be that the business analogy was an inappropriate one. It was just one that is familiar to me, while we need to bring in a new group of officers, due process would suggest that we could not hold these officers accountable for having failed, given their legal advice and what had occurred over a very long period of time. I will be able to talk about any of that in detail.

Chairman WARNER. I will return to this during the course of the questioning period.

Secretary ROCHE. Yes, sir.

Chairman WARNER. Have you completed your statement, Mr. Secretary?

Secretary ROCHE. Yes, sir.

Chairman WARNER. Chief of Staff.

#### **STATEMENT OF GEN. JOHN P. JUMPER, CHIEF OF STAFF, UNITED STATES AIR FORCE**

General JUMPER. Mr. Chairman, Senator Levin, I want to reiterate to both of you, as I have to you and many of the distinguished members of the committee here over time, my total commitment to ensure to you and to members of the committee and to the American people that we will graduate from the United States Air Force Academy cadets of character, honor, and integrity. We will take whatever actions are necessary to correct the climate that has caused any deviation from that course.

As has been said today, the standards of the United States Air Force are being demonstrated daily in the skies over Iraq. I think

that our job is to make sure that those standards exist at our United States Air Force Academy.

Indeed, as the Secretary said, we do have a climate problem. We have obviously allowed a climate to evolve at the Air Force Academy that prevents alleged victims from coming forward and from having their allegations taken seriously. That is what we have heard from several alleged victims.

We are standing by and we are encouraging everyone to come forward to give us any information they can possibly give us to allow us to get to the bottom of these allegations. We have gone to Senator Allard, as he well knows, and he has been very helpful on this, to ask him to approach those who have come to him and let them come forward.

Many of these, I think, are no longer on active duty, and even the ones that are, there is now a new team in place that will receive these allegations in the right spirit and be able to deal with them as they are presented with the rights of the victims in mind.

The Secretary and I, as the Secretary said, went out and we specifically addressed the cadet wing, the entire cadet wing, each of us separately and individually. We talked to the cadet wing about their responsibility, to understand their responsibility with regard to making sure that no criminals graduate from the Air Force Academy and to help us implement the new changes that will make sure of that and give them the opportunity to help us weed out the criminals among them.

We have in our recommended changes a group of steps that will help us change the conditions that have sometimes contributed to an environment where predators might be able to take advantage of the opportunities; situations in the dormitories in which rules over time did lapse and erode the basic dignity that should exist between males and females in any situation. How you leave your door open in your room. How you room together or separately in the dormitory areas. Things like that we can easily correct and it will give each of the cadets an opportunity to provide themselves mutual support in an environment where some predator might otherwise emerge.

The changes that we make will allow victims to come forward and enter the process at any point, and at any point make sure that there are advocates for that victim who will take that case seriously. They will ensure that the right sort of trained people are present to deal with these, not only the facts of the case, but the emotions of the case, which, Mr. Chairman, often overwhelm the details and the facts.

Finally, let me talk to accountability as well. As the Secretary said, what we have said publicly, what I have said repeatedly in public is that when the accounts are in, when the reports are all in, and we assess the details of those reports, if there are situations where legitimate victims have come forward and they have not been properly heard or they have or their allegations have been somehow set aside, or that known criminals have been protected in some way, then I can guarantee you, Mr. Chairman, that accountability and responsibility would be found at the same level.

I have said this repeatedly, sir, and I repeat it to you again today: The Superintendent of the United States Air Force Academy

reports to the Chief of Staff. No one takes this situation more seriously than I do. No one has more at stake as far as the reputation of this institution than the Secretary of the Air Force and I do.

Sir, I can guarantee you that I have spared no energy—even in the face of this war—nor will I spare any energy to get to the bottom of this and to make sure that corrections are put into place that you have confidence in and this committee has confidence in, and the American people have confidence in.

I thank you, Mr. Chairman.

Chairman WARNER. Thank you, General Jumper.

[The prepared joint statement of Secretary Roche and General Jumper follows:]

PREPARED JOINT STATEMENT BY HON. JAMES G. ROCHE AND GEN. JOHN P. JUMPER,  
UNITED STATES AIR FORCE

Thank you, Mr. Chairman, members of the committee. We appear before you to report on our efforts to make the necessary reforms at the United States Air Force Academy as a result of complaints regarding incidents of sexual assault there and the institutional response to these complaints.

The United States Air Force Academy exists to educate, train, and inspire so that each graduate is a commissioned leader of character committed to our core values of integrity, service, and excellence. Above all else, the Air Force Academy is a military organization designed to serve the Air Force and our Nation. In pursuit of its goal to produce leaders of character, the Academy must establish and nurture policies that emphasize the character expected from commissioned Air Force officers. To remain relevant to the larger Air Force, the Academy will not be managed as a separate entity; rather, it must reflect the values and norms of the broader Air Force while maintaining the high academic standards of a world-class university.

We've been engaged in a comprehensive review of the investigative procedures, disciplinary processes, and overall climate at the United States Air Force Academy. Our focus throughout this process has been on fulfilling our goals of educating, training, and inspiring Air Force leaders of the highest character and integrity, ensuring the safety and security of every cadet, and enhancing the trust and confidence of the American people in the Academy. As a result of this review, we issued the Superintendent of the Air Force Academy the enclosed policy directive that comprises the initial collective judgment of the leadership of the United States Air Force on how to fulfill these objectives. Enclosed is a copy of that directive. Our objective is to ensure these measures are substantially in place prior to the arrival of the incoming class of 2007. We look forward to discussing our *Agenda for Change* with the committee.

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MEMORANDUM FOR SUPERINTENDENT, UNITED STATES AIR FORCE  
ACADEMY

SUBJECT: UNITED STATES AIR FORCE ACADEMY—AGENDA FOR CHANGE

1. The United States Air Force Academy (USAFA) exists to educate, train, and inspire our future leaders. In concert with a review of investigative procedures, disciplinary processes, and the overall climate at USAFA, we have compiled the attached directives designed to ensure the safety and security of every cadet and to enhance the trust and confidence of the American people in the Academy.

2. The introduction of this directive document reinforces those characteristics we expect to underscore the mission and values of the United States Air Force Academy. Character, leadership, integrity, and honor are the values we must instill in every cadet and future officer of the United States Air Force. These principles have guided our development of the attached directives. Specific measures are outlined under four principal headings: Leadership, Cadet Life, Officer/NCO Selection, and Broader Academy Climate. We expect these changes to be implemented immediately and to be substantially in place by the arrival date of the incoming cadet class of 2007. An implementation team will assist your efforts to fully implement the enclosed policies and procedures.

3. These measures comprise the initial collective judgment of the leadership of the United States Air Force, and further initiatives may be considered as appropriate. We look forward to working with all the stakeholders of the United States Air Force

Academy to rebuild the climate and culture at the institution and to strengthen its ability to develop outstanding scholars and warriors to serve as officers in the United States Air Force.

JOHN P. JUMPER,  
*General, USAF Chief of Staff.*

JAMES G. ROCHE,  
*Secretary of the Air Force.*

Attachment:

As stated

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## **United States Air Force Academy: Agenda for Change**

### **Introduction**

#### *Mission and Values*

The United States Air Force Academy exists to educate, train, and inspire so that each graduate is a commissioned leader of character committed to our core values of integrity, service, and excellence; professional growth throughout a career as an officer in the US Air Force, and; a lifetime of selfless service to the nation. Above all else, the Air Force Academy is a military organization designed to serve the Air Force and our nation. In pursuit of its goal to produce leaders of character, the Academy must establish and nurture policies that emphasize the character expected from commissioned Air Force officers.

To remain relevant to the larger Air Force, the Air Force Academy must focus on the deliberate development of Air Force officers, providing the required mentoring, guidance, and discipline to produce future leaders. The Academy will not be managed as a separate entity; rather, it must reflect the values and norms of the broader Air Force while maintaining the high academic standards of a world-class university.

#### *The Cadet Wing, Group, and Squadron*

The cadet squadron is the core military organization of the Academy. It provides the structure for daily life. Cadet Group and Wing organizations function to facilitate the leadership training activities of the cadet squadron.

It is every cadet's duty to uphold the highest standard of integrity, service, and excellence as they progress from Basic Cadet to Firstclassmen within their squadron. Every cadet must aspire to lead, both at the Academy and as a commissioned officer. Their potential to assume the responsibility of command will be measured by how they hold themselves and their subordinates accountable to the Academy's standard of discipline.

Every officer and NCO assigned to the Academy will make it their duty to develop and mentor cadets into model officers. The focal point for this effort is the squadron Air Officer Commanding (AOC) and Military Training Leader (MTL). The AOC and MTL will lead, develop and mentor the cadets in their charge with a deep personal commitment that models the command relationship between the squadron commander and first sergeant. The universal guiding principle for all cadets, officers, and NCOs will be honor, integrity, and mutual respect that is the hallmark of the Academy tradition.

### *Honor, Integrity, Mutual Respect*

The United States Air Force is the greatest air and space force on the planet because of the personal honor, integrity and loyalty of its people individually contributing their utmost to achieve a common goal: unbeatable air and space power for the nation. These characteristics can only be cultivated in a climate of trust and mutual respect: between the service and the nation; between the institution and its members; and, between the individuals who **are** the institution. In the absence of this fundamental compact, none of the values we cherish – integrity, service, excellence – can endure. Loyalty to these values and the institution must be placed above loyalty to any individual who betrays these values.

The Air Force Academy must bolster those processes and systems that guide honorable conduct, of which discipline for infractions is an integral component. The Academy must ensure cadets understand and exercise the spirit of these values in the context of their future in the Air Force. Discipline must be administered with measured judgment and in accordance with our core values. Ultimately, the success of the Air Force Academy depends on cadets, mentored by squadron-level officers and non-commissioned officers, internalizing these values and emerging from the Academy as officers of high character. The climate we strive to achieve at the Air Force Academy is one in which cadets take appropriate action to deter, stop, or report the criminal actions of a few that sully the reputation of themselves, their fellow cadets and the United States Air Force.

### *The Cadet Honor Code*

The Cadet Honor Code is a statement of intent: the intent to hold both ourselves and our peers to an explicit standard of conduct. Enforcement of the honor code must be based on the goal of instilling in our cadets an imperative to voluntarily live by the **spirit** of the code rather than encouraging interpretive efforts to evade punishment under the **letter** of the code. A lie is a lie, the mere construction of which requires intent to deceive. Failing to acknowledge this simple moral truth reinforces an attitude accepting the evasion of responsibility for the consequences of one's own behavior. This behavior is unacceptable in a commissioned officer and is, as a result, not to be tolerated at the Air Force Academy.

A critical characteristic distinguishing a profession from a vocation is the willingness of its members to establish and enforce standards of professional conduct, removing those who fail to meet the standard when necessary. Character is a requirement for a practitioner of the profession of arms in the US Air Force. For this reason, we place special emphasis on the "toleration clause" of the Cadet Honor Code. It must be made clear that loyalty should never be confused with excessive tolerance, and that covering up another

cadet's criminal activity cannot be viewed as loyalty to a comrade. Ignoring or covering up illegal activity among our peers is to protect one who has violated his or her own loyalty to the institution and his or her fellow cadets. Active duty officers who oversee and provide advice to cadets about the administration of the honor code should assure compliance with its spirit.

## **Policy Directives and Initiatives**

### **Leadership**

- The Superintendent is responsible for overall strategic leadership and planning at the United States Air Force Academy. The Superintendent will initiate a strategic planning process, which will define goals, specify measurable objectives, tasks, and metrics. These goals will be aligned with the stated mission and values of the Academy. The Superintendent will review all USAFA Instructions for compliance with the mission statement, the strategic planning goals, and USAF policies. The office of Vice Superintendent will be eliminated and redesignated as Director of Staff.
- The Commandant of Cadets is responsible for creating an atmosphere that ensures officer development and academic excellence are maintained to the highest standards. To enhance and ensure every aspect serves the cause of leadership and character development, the Director of Athletics will report to the Commandant. The Academic Dean, also bound by the leadership and character development mission, will continue to report to the Superintendent of the Academy. These two officers, the Commandant and the Dean, will work closely together in the development of our future Air Force leaders. The Office of the Vice Commandant, under the Commandant, will assist the Commandant in fulfilling his/her duties and act as an ombudsman for the Commandant and Superintendent.
- In addition to other duties assigned to this position, the Vice Commandant is specifically tasked with overseeing Academy sexual climate issues. In fulfilling the duties of an ombudsman, the Vice Commandant will:
  - Develop an effective template, along with performance metrics and databases, for the management of sexual assault cases in an expeditious, judicious and sensitive manner with the goal of ensuring justice is served both for the victim and the accused.
  - With the support of officers detailed to the Vice Commandant from the Office of the Judge Advocate, the Counseling Center, and the Office of Special Investigations, develop and implement procedures

for an Academy Response Team (comprising medical, legal, counseling, and command elements) to provide a victim of sexual assault immediate assistance, develop the facts, and initiate appropriate actions. The members of this team will receive special training on the management of sexual assault cases including victim psychology. The cadet alleging sexual assault will be thoroughly briefed on the investigative and legal process.

- Direct the Academy Counseling Center and maintain liaison as appropriate with community counseling entities.
  - Determine the appropriate policies and procedures toward separating those alleged to have committed sexual assault offenses from the alleged victims.
  - Every effort will be made to assist the alleged victims throughout the inquiry and assure victims that their concerns will be dealt with through the command channels. We will not tolerate criminals, nor will we tolerate their behavior. We will not tolerate individuals who harbor these criminals. We will not tolerate any individual who shuns alleged victims of criminal activity, nor will we tolerate retribution against these victims.
  - Under guidance from the General Counsel of the Air Force, apply definitions of sexual assault at the Academy consistent with standard, Air Force-wide definitions. Ensure all Academy instructions, training materials, and guidance reflect Air Force-wide definitions.
- Academy leadership must communicate with the faculty and cadets in a forthright manner about the status of cases being prosecuted, while protecting the privacy rights of the individuals involved. This will ensure the cadet wing is aware of the seriousness of the leadership's commitment to timely justice.

### **Cadet Life**

- *Basic Cadet Training:* Beginning in the summer of 2003, the Basic Training program will be augmented to enhance cadet preparation for the military environment they are entering and the interactions that will occur. Basic Cadet Training must emphasize fair treatment and mutual respect. The orientation will provide substantial material on sexual assault prevention and overall behavior expected of cadets. The program syllabus will include guidelines on workplace behavior – including consistent USAF definitions of sexual assault and harassment – as well as demeanor and consequences.
- *Fourth Degree Training:* During Basic Cadet Training, in order to instill a sense of responsibility and uphold the standards of good order and

discipline of the United States Air Force Academy, only First Class or Second Class Cadets will interact with Fourth Class cadets. In the first half of the fall semester, only First Class cadets will discipline Fourth Class cadets. After Thanksgiving, selected Second Class cadets can be given training responsibility for Fourth Class cadets. Third Class cadets will only interact with Fourth Class cadets in academic mentoring/tutoring circumstances or on the spot training guidance. The exercise of discipline toward a Fourth Class cadet by Third Class cadets will be governed by a First Class cadet.

- *Billeting/Dormitory Life:* Separate billeting arrangements will be established for female and male cadets upon entering the Academy for Basic Cadet Training. During the academic year, Fourth Class cadets will be billeted with their assigned squadrons.
- Rooms will be arranged in the dormitories to provide for squadron integrity. Within a squadron, rooms occupied by female cadets will be clustered in the same vicinity near the women's bathrooms. The intent is to preserve basic dignity, deter situations in which casual contact could lead to inappropriate fraternization or worse, and to aid mentoring of lower-degree female cadets by senior female cadets.
- No cadet will enter the room of another cadet of the opposite sex without knocking on the door and announcing themselves, and waiting for the door to be opened by the cadet occupying the room. Doors shall be fully open at all times when a non-roommate or several non-roommates are present in the room. The Commandant of Cadets will determine the appropriate level of punishment for any violation of this standard.
- The Commandant will establish a 24/7 dormitory security and monitoring system. An officer will be on duty at all times in the dormitories. This duty officer will be responsible for good order and discipline, and will manage a roving patrol in effect at night and on weekends. Fourth class cadets will not be assigned such duty.
- Any cadet found to provide, purchase for, or sell alcohol to an underage cadet will be disenrolled immediately.
- *Reporting Incidents of Sexual Assault:* All allegations of sexual assault will be reported to the officer chain of command immediately.
- The Counseling Center and the CASIE program will be realigned under the 34 Training Wing and report to the Vice Commandant. The Counseling Center will be staffed with qualified officer counselors.

- All efforts will be made to encourage victims of sexual assault to report any incident. Specific attention will be paid to the education of both male and female cadets regarding action they can take to prevent or to report instances of assault on them or their fellow cadets. Annual Training is required for all cadets, staff, and faculty. The Vice Commandant of Cadets is responsible for establishing, monitoring and documenting this annual training requirement.
- Because loyalty to values and loyalty to institution must be placed above misplaced loyalty to someone who's betrayed our values and our institution, shunning of cadets who attempt to maintain high standards and report sexual assault will not be tolerated and will be dealt with by cadet squadron commanders who have responsibility for maintaining and enforcing standards. Cadet commanders will be held accountable for ensuring that such behavior does not occur.
- Cadet support groups will be organized by the Superintendent to address aggressively the concerns of victims of sexual assault.
- Cadet commanders will be held responsible for the actions of their subordinates. Upper class cadets who are aware of or observe criminal activity will be held accountable if they fail to take charge of the situation and exercise their leadership responsibilities.
- In all reported cases of sexual assault, amnesty from Academy discipline arising in connection with the alleged offense will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, any cadet involved in hindering the reporting or investigation of the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets.
- Any false accusations of sexual assault will be prosecuted to the full extent of the law.
- All medical personnel will receive training in dealing with sexual assault and at least one nurse and doctor will be assigned to the Academy Response Team. Rape Kits will be available at both the Cadet Clinic and Academy Hospital.
- *Mentors*: The Commandant of Cadets will establish a cadet-mentoring program. Each Second Class female cadet will serve as a mentor to at least one Fourth Class female cadet not in her squadron or group, and each male Second Class cadet will mentor at least one Fourth Class male cadet not in his squadron or group. Evaluations of military performance

for the Second Class cadets will in part be based on their mentoring performance.

- The "Bring Me Men..." sign on the Terrazzo wall will be removed immediately, and will be replaced by a statement that more suitably represents the aspirations of the entire cadet wing and the core values of the Air Force.
- An audit of Academy processes to deter, stop, or deal with sexual assault will be conducted every three years by the Headquarters Air Force.

### **Officer/NCO Selection, Training, Roles**

- Air Officer Commanding (AOC) Selection/Training: AOC assignment processes will be enhanced to ensure that selectees are superior officers who achieve commanders' list status. AOCs will be specially selected and academically prepared to assume the unique duties of leading, mentoring, and training cadets. All AOCs will be Majors or Major selects. AOCs will meet a central board established by AFPC. The Commandant of Cadets is responsible for the final selection of all AOCs. All AOCs will be required to live on base.
- AOCs will receive one year of graduate education resulting in a Masters Degree in counseling or similar area prior to a 2-year role as AOC. During the year of study, the officer will have formal OJT with a sitting AOC. AOCs will be considered priority status for post USAFA assignments.
- A specially selected experienced Non-commissioned officer will be assigned to each cadet squadron as a Military Training Leader (MTL). This NCO will report to the Squadron Air Officer Commanding (AOC) and will be senior to any cadet at the Academy. These senior enlisted airmen will be in the chain of command, and will assist the AOC in maintaining good order and discipline.
- Military Training Leaders (MTLs) will receive specific training in the combination of skills required in the cadet setting.
- AOCs and MTLs will be placed on orders in the chain of command to the Commandant of Cadets, and will be noted as such in the organizational charts of the Academy.
- The duties of the AOC and MTL will be clearly defined in written instructions based on parallel activities in the active duty Air Force.

- The primary place of duty of the AOCs and MTLs is in the cadet squadron or all other areas best facilitating their involvement in the daily life and routine of the cadets in that squadron.
- AOCs will be commanders and will be so designated on G-Series orders. They will have Uniformed Code of Military Justice authority and responsibility commensurate with their rank.

### **Broader Academy Climate**

The academic and athletic elements of the Academy will be recognized as contributions to the military purpose of the institution.

- As noted, the Director of Athletics will report to the Commandant. Those engaged in intercollegiate athletics will be required to engage in military and leadership training equivalent to their classmates. Off-season athletes will be required to participate in squadron activities.
- The Academy Board will be re-chartered as the Senior Executive Board. The board members will act as advisers to the Superintendent regarding the balance of time devoted to academic and officer development activities with responsibility for final decisions resting solely upon the Superintendent.
- Department Chairs will participate in an Academic Board that will report to the Dean.
- Communications among the military, academic and athletic departments will ensure that the status of cadet probations, current status of active or inactive participation on athletic teams, and academic progress are openly and promptly communicated across departments.
- Appropriate academic courses in leadership and character development will be made part of the core academic curriculum. A lecture series sponsored by the Secretary of the Air Force and supported by senior Air Force leadership will emphasize the moral and ethical standards expected of Air Force officers. The Department of Behavioral Science and Leadership will offer courses in military leadership.
- All candidates for Permanent Professor slots will be interviewed and selected by the Secretary and Chief of Staff. Unless extended by the Secretary of the Air Force, a Permanent Professor will be expected to retire in the rank held at 30 years of service. The senior officer in each department will be held accountable for all subordinate military officers and will ensure good order and discipline within his/her department.

- Department Chairs will rotate among the faculty within that department. No faculty member will hold a departmental chair for a period exceeding five years.
- Officer assignment policies and tour lengths at the Air Force Academy will be reviewed and revised by the Secretary of the Air Force. USAFA assistant and associate professors should be recruited from the top personnel out of the line force, teach for a designated period, and then return to the line.
- With the exception of those designated at the discretion of the Secretary and Chief of Staff, all graduates of the Academy will enter the Air Force as 2nd Lieutenants in operational line AFSCs at the wing level or below. Our objective is to ensure that all physically qualified Academy graduates become fully immersed into expeditionary wing level operations, maintenance, and staff or mission support squadrons of the Air Force. It is imperative that graduates first gain experience in the front line warfighting mission of the Air Force before branching off into non-combat related fields. Law school, medical school, liberal arts graduate schools or functional career fields such as acquisition or public affairs may be pursued only after these officers have proven themselves as operational Air Force professionals.
- Those cadets interested in cross commissioning to other military services will retain that option under existing regulations.
- Pilot training slots will be evenly divided between Academy and ROTC scholarship accessions. In addition, OTS accessions may compete for pilot training slots.
- In accordance with Title 10, U.S.C., all AFROTC cadets who are appointed as officers in the Air Force in May or June will have the same date of rank with Academy graduates, regardless of their graduation date. After twelve months, the lineal list will be published. The top officer for that year group will be the top graduate from the United States Air Force Academy. All other Second Lieutenants with this date of rank will be slated according to their cadet performance – either at the Academy or in the AFROTC program. Any cadets may have their lineal ranking as officers affected by disciplinary action during their time at the Academy or AFROTC.

Chairman WARNER. You and I have a very strong and mutual friendship based on common roots going years back in our early life.

General JUMPER. Yes, sir.

Chairman WARNER. I have the highest personal regard for you, and I detect in your testimony deep feeling.

General JUMPER. Yes, sir.

Chairman WARNER. This case is unfortunate, particularly at this critical time in your career where otherwise you and your colleagues are brilliantly directing the progress of the air elements of this war.

General JUMPER. Thank you, sir.

Chairman WARNER. I commend you for that, personally.

General JUMPER. Thank you, Mr. Chairman.

Chairman WARNER. I guess what I want to do is to go back and try and clarify what is in writing here with regard to this issue of accountability.

I have before me what purports to be a news release from the United States Department of the Air Force. I read the following, "The new leadership team has been briefed on the Air Force directive announced today and will be empowered to take full ownership with the changes in dealing with recent sexual misconduct allegations, as well as the broader environment at the Academy. Roche said that while the cadet behavior is at the core of this issue, the leadership must be responsible and accountable for the larger environment at this institution. 'As the problems regarding sexual assault allegations predate the current leadership, we do not hold Generals Dallager or Gilbert responsible,' he said. 'Still, change must occur, and a new leadership team to implement these changes is in the best interest of the Academy and the Air Force.'"

My first question is: Why did you not await the conclusion of at least your own investigation, I think prudence would have dictated awaiting the Defense Department's investigation—prior to making the statement, "We do not hold Generals Dallager or Gilbert responsible"?

Secretary ROCHE. Sir, I took the position that for the 10-year period where we were making the report with all the data, they could not have been responsible for that period.

Chairman WARNER. Do you mean any part of the period?

Secretary ROCHE. I looked at the period that they were there, sir.

Chairman WARNER. Yes, and you gave the times.

Secretary ROCHE. In particular, General Gilbert. I looked at the cases that were involved. As I said, there were four cases of cadet versus cadet. Under those circumstances, three are still open, and one was disposed of. On that basis and the basis that he had made an insensitive comment about how a young woman should be protecting herself—

Chairman WARNER. Which officer are we speaking of?

Secretary ROCHE. General Gilbert.

Chairman WARNER. Right.

Secretary ROCHE. My sense was that he needed to be replaced, that he could not carry on anew with a new set of directions, given the climate that was there. That in order to have a new climate, we needed to have new people in place. I could not find something to base a letter of reprimand or anything else on that I would not have to go back and find every other commandant who had been there, because the proportion that he is responsible for was less than many others. The survey data that Senator Allard refers to, some of the early surveys are considered not valid because the sample size was too small, et cetera.

But in the last two, the trend since General Gilbert got to the Academy having to do with reprisals or sexual harassment, improves. So it became a very mixed case. It became an issue of, in my belief, these officers should leave because we needed to give very strong rudder orders to the Academy, but there was no reason based on what we knew to hold them accountable at this time. However, we did say at the same press conference, and it is not in the announcement, that if something were to come up in the Inspector General's reviews that we would, of course, hold any officer accountable.

Chairman WARNER. Facts speak for themselves, but you say three of the cases were still open on General Gilbert's watch, is that correct?

Secretary ROCHE. Yes, of cadet-on-cadet, yes.

Chairman WARNER. Is that not reason alone to not come out publicly and say you are not going to hold them accountable?

Here, let me just make this observation. I draw on some modest experience, having been an Assistant U.S. Attorney, conducted investigations, having had jobs commensurate with yours for 5 years-plus. Once people read this and the investigation is ongoing, then the investigator goes to a subordinate of General Dallager, and suddenly the subordinate says, "He is not going to be held accountable. Why in the world should I give the investigators facts?"

Do you not think this could have negatively impeded the ability of the IG of the Department of Defense, the IG of the Air Force, with the ongoing investigation to have this statement made at this time?

Secretary ROCHE. Sir, at the time, I did not think that, no.

Chairman WARNER. You did what?

Secretary ROCHE. At the time, I did not think it would impair either the Air Force IG or the Office of the Secretary of Defense IG, in looking at the cases and looking at whether there was any violation of procedures or processes which they will look at.

Chairman WARNER. But it could well have affected the witnesses that they were, on an ongoing basis, going to talk to. I will just make this observation.

Secretary ROCHE. Yes, sir. I take your observation.

Chairman WARNER. I just can't believe it. You went on, this is a transcript of the press conference, let us see. You say here, "To suggest that it is their fault would really miss the point. The climate did not start 3 years ago, ma'am. Their officers, their predecessors, us, our predecessors at the Air Force have let the place down by shortchanging in money and in manning in terms of the Air Officers Commandry. There is a lot of responsibility, bad legal advice."

I understood you to say you felt you could not issue a letter of reprimand to the current superintendent because you would have to issue them to the previous superintendents. I can't follow that line of reasoning.

Secretary ROCHE. Mr. Chairman, my views were that the situation had occurred over a very long period of time. These last officers did nothing that I could find that suggested that they failed in their responsibility to adhere to the processes that were in place.

A number of those processes, I believe, were mistaken. I believe based on some bad legal advice, they were mistaken.

I also believe that the Air Force, by not fulfilling its obligation to ensure that these Air Officers Commanding, which are like the major level officers who work with the cadet squadrons, that they were not given the proper education and the proper training, that the enlisted or senior enlisted people were removed from the chain of command over time. All of this contributed to the climate.

Chairman WARNER. I am running over my time, but believe me, I do not know how much training you have to do to deal with these cases. This is plain old common sense; standards that were largely taught to us by our parents and at every step of our life as we progressed, whether we were in the Air Force or anything else, sir. When it is wrong, we know it is wrong.

Secretary ROCHE. When issues came to the commandant, each one that I had read, he sought to do the right thing.

Chairman WARNER. All right. General Jumper, can you answer my question, or do you wish to—

General JUMPER. Sir, I will tell you that we looked at each and every case. We have not been through the detailed analysis yet that the IG still has to do, and that will come to us over the next 2 weeks. If something comes to us that has not come to us yet, that tells us that the leadership of the Academy did not approach any single case with the full intention of dealing with the facts that were put before them, or they hid information, or they harbored or protected anyone.

Chairman WARNER. Okay. Well, then, why did you not wait until those reports were in your hand before publicly making this statement?

General JUMPER. Sir, along with that statement, not reported was a statement that said if this evidence comes to us as a result of this report, we will take action and the people will be held accountable. That was not reported.

Chairman WARNER. Well, I have made my case.

Senator Levin.

Senator LEVIN. The problem is both of you are talking about the cases that were reported to the commandant. It is the cases that were not reported because of the climate that you are not addressing and which is a major issue.

The fact that these particular commanders inherited a climate is irrelevant. It is like saying that something was done improperly before they got there, and they continued to do things improperly; therefore, they are off the hook. No, they are not. No way.

If the climate is improper, which you both acknowledge it is and was, the fact that it was improper before they got there is not relevant to their accountability. You, instead, talk about, "Well, there were four cases." Maybe he handled four cases, or they handled four cases properly. What about the 14 or 40 or 400 that were discouraged from reporting anything because of the climate? What about them?

Secretary ROCHE. Senator, I absolutely agree with you that the climate was bad, but also—

Senator LEVIN. No, you do not agree. You do not agree with me, because you are saying that you are not going to hold anybody ac-

countable for continuing a climate that they inherited. You do not agree with me.

Secretary ROCHE. In particular, General Gilbert and General Dallager used the survey that they were told was the one that was valid, the one that was done at the end of 2002. They briefed the corps of cadets. They went through the processes that had been there in place, like the reporting process, the education process, et cetera, and instituted a number of things to try to address the climate survey that came out that they believed was the one that was valid to use.

If they had done nothing, then I would feel that they were derelict, but they did try to do things as best they understood they could do. Certainly, on any particular case that came forward which was actionable, they appeared to take as much action as they could take.

Senator LEVIN. Are you saying that there is no evidence that they continued, permitted, or tolerated a climate where cadets were discouraged from reporting sexual assaults?

Secretary ROCHE. Sir, I believe they took actions to try to ensure that this situation did not arise and, if it arose, to prosecute any charges of criminality against someone—

Senator LEVIN. You keep wanting to go back to that. I want to talk about the climate that discouraged cadets from coming forward because people would be ostracized or that people would be punished for having too much alcohol or other minor things. Are you saying that the people who were in charge of this process tried to correct the climate where people, cadets, females were ostracized, would be ostracized, thought they would be ostracized, or in some way their career would be hampered by reporting something where there was too much alcohol involved? Are you saying that, that there is no evidence of that?

Secretary ROCHE. They had an amnesty program, which they put in place. It was not a blanket amnesty. They did what is done at the other academies, which is to deal with the criminal issue first, except in one case where they did not that I am aware of, and then went back and tried to hold each of the cadets who were also involved accountable for violation of Academy regulations.

Senator LEVIN. Including the women, the victims?

Secretary ROCHE. Including the victim, in one case.

Senator LEVIN. That violated their own amnesty doctrine, because according to the reports that we have, the procedures were to encourage cadets to report sexual assaults to ensure they receive available medical and counseling services, and that they would generally not be disciplined for self-identified violations of cadet instructions, such as pass violations, unauthorized alcohol consumption, or unauthorized dating which may have occurred in connection with the assault.

So when you say that after the perpetrator was in some way dealt with, they went back and went after the victim, that is the problem. That is exactly the problem that they perpetuated here. It is no excuse to say that they inherited it.

Secretary ROCHE. Sir, I am not trying to say they inherited—

Senator LEVIN. But they perpetuated it if they went back at the victim and they said, "Okay. Now, we have dealt with the alleged

perpetrator here, and now we are going to talk to you. You had too much alcohol."

Secretary ROCHE. Sir, they would not say they had too much alcohol. They would say——

Senator LEVIN. Whatever the violation was. It is not supposed to have happened under the existing amnesty program. So you have announced a new amnesty program which just repeats what was previous.

Secretary ROCHE. No. The one before was one that could or could not be put in place. It also, in the cases before—and I am trying to do this from my recollection—where they went back, there was no criminal activity proven. It was an, oftentimes, he-said/she-said situation. There was insufficient evidence to take any action. At that point, they then did issue demerits for Academy disciplinary violations.

Senator LEVIN. For reporting an incident. You are saying people who reported the assault on them were disciplined, given a demerit.

Secretary ROCHE. Yes, sir.

Senator LEVIN. Their careers were negatively affected. That is the climate that is so horrible, is that the victim——

Secretary ROCHE. The climate has two parts, sir, if I can finish the one part?

Senator LEVIN. No. I want to go right at that.

Secretary ROCHE. Yes. At this one——

Senator LEVIN. That should not have happened, should it?

Secretary ROCHE. There are two sides to this, Senator. I can tell you that there are sensible people who say that you should hold every cadet accountable for the actions of that cadet.

Senator LEVIN. Do you say that people who report an assault upon them should be given a demerit for something like they were dating improperly or there was too much drinking?

Secretary ROCHE. As you can tell from the actions we have issued, I do not believe that.

Senator LEVIN. Fine. I want to know what you believe.

Secretary ROCHE. I believe you give the amnesty, and it is blanket amnesty.

Senator LEVIN. Now, one final question——

Secretary ROCHE. The second point on ostracization, which you also raised, Senator, in fact, this leadership did try to work with the cadet leaders to not have that happen.

Senator LEVIN. One final thing: The message in 1995, which Senator McCain has referred to, is that commanders will be held accountable if they fail to correct the problem. There was a problem here. They did not correct it. Not only has no one been held accountable—and I agree with the Chairman, if you had waited for an Inspector General's report perhaps before you did that—but you have exonerated people. You are saying they will not be held accountable because they inherited a problem that they did nothing about?

I have to tell you the 1995 message was ignored, it seems to me, by these commanders and maybe their predecessors. Not only has nobody been held accountable, but nobody is going to be held ac-

countable because you have exonerated them in advance of an Inspector General's report.

Secretary ROCHE. Sir, based on the General Counsel's report, preliminary report, and based on what we looked at, based on reading the cases, they were removed from their position. That is one level of accountability.

Senator LEVIN. But for different reasons.

Secretary ROCHE. They were removed because I did not have confidence in them going forward to be able to do what needed to be done.

Senator LEVIN. Not for any failure.

Secretary ROCHE. The failure was consistent with a series of failures, bad legal advice, bad procedures and processes at the Academy.

Senator LEVIN. My time is up. Thank you.

Chairman WARNER. Senator McCain.

Senator MCCAIN. Remarkable. General Jumper, you just stated we do have a climate problem, and then you went on to talk about some of the situations and issues that exist.

In yours and Secretary Roche's comments at that press conference, you said, "There was an issue. A lot of cadets feared coming forward because of peer pressure."

You go on to say, "We will take care of any barrier to a person coming forward, and particularly in order to ensure that we can get at a crime and make sure we do not commission a criminal. If a cadet provides or sells alcohol to someone who is under age, you will be disenrolled and disenrolled immediately. We will change how we select the officers who will be air officers commanding. We will return to the time where we sent these officers for a year of education. We have allowed ourselves to not make use of one of our greatest assets, our non-commissioned officers. We will restore the chain of command."

There is a series of other things that have to do with what I have touched on, cluster around women's washrooms and to help understand, think of building with four corners, et cetera. You just said that arrangement with rooms should not have existed.

"Our old rules about doors being open when people not from your room are in your room are going to be restored. We will crack down on these." All those things were going on until when? When did you institute these changes?

General JUMPER. We are in the process of instituting those changes now.

Senator MCCAIN. You are in the process of instituting those changes now?

General JUMPER. Yes, sir.

Senator MCCAIN. They were "a climate problem for a number of years." Right?

General JUMPER. Sir, there were a variety of problems for a number of years. You are exactly right that we are in the process of correcting.

Senator MCCAIN. Okay. "No one is going to be disciplined," in your words, "because we are going to look at each and every case." I do not get it, General Jumper. When you went to school and you

were a young officer, were you not told that things that happened under your command you were responsible for?

General JUMPER. Yes, sir, I certainly was.

Senator MCCAIN. If there is a climate under your command that requires that all these changes have to be made that you and the Secretary said needed to be made, that therefore no one is responsible?

General JUMPER. Sir, if the climate has eroded over time due to a variety of things that have happened over years, I am not sure that it is completely evident at any one moment that the climate has deteriorated to that point.

Senator MCCAIN. But you just stated we have a climate problem.

General JUMPER. Yes, sir.

Senator MCCAIN. You describe some of those problems.

General JUMPER. Yes, sir.

Senator MCCAIN. They are all being changed now?

General JUMPER. It did evolve over time.

Senator MCCAIN. Oh, it was an act of God? For instance, the——

General JUMPER. I mean, the room arrangement, Senator, as a matter of fact, is a room arrangement they use at the other two academies. They use it successfully. In this case, we believe that it contributes to the problems that we have, that have been reported at the Academy. We are trying to create the environment where people who have not come forward before now feel free to come forward and to take those obstacles that they state were limitations and allow them to go away. Many of these obstacles are not obstacles in other places, but we are trying to correct what we find at the Air Force Academy to be obstacles to the population there.

Senator MCCAIN. Obviously you and I and the Secretary have a fundamental disagreement here. You said you have a climate problem that has been going on for a long time. Now, you are making a huge series, a very significant series of changes that need to be made in your view in order to change this climate; yet no one is being held responsible for that climate, whether it be present or past people in positions of authority. With all due respect, that flies in the face of everything I learned about accountability and responsibility.

Mr. Chairman, the testimony we have heard today just reinforces my view that we really do need to act. I do not know exactly who does it, or how we arrange it to have an outside board look at this situation. When people are not even being held accountable for situations that they say they are fixing, there is something Orwellian about that. I thank you, Mr. Chairman.

Secretary ROCHE. Senator, may I——

Chairman WARNER. Thank you, Senator McCain.

Secretary ROCHE.—may I? Senator, may I?

Chairman WARNER. Sure.

Secretary ROCHE. I went over everything we have done with the Board of Visitors and made it clear, Senator, I do not object to outsiders coming and taking a look at this stage. We wanted to do something quickly to ensure that when these new cadets come enlist in 90 days, the change was made.

We told the Board of Visitors that at the next meeting that they hold, we will have the finished report. We will go through every-

thing. At that point, if we need to bring in some outsiders—the Board of Visitors, it will be an issue that we will address at that time, as Senator Allard well knows as he was on the telephone conference, and we can do that.

We believe we have acted quickly and firmly with the situation that we found has occurred over many years, and we have tried to delineate where responsibility went. Senator, I well may be wrong, but I believe that the accountability goes over so many administrations there that I do not know where to begin, except at 1993 and forward.

Senator McCAIN. I thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator. I share your views about an outside independent look at this.

We have a problem on our side, Senator Levin, that three of us are required to be in the meeting of the chairmen of the committees now: myself, Senator McCain, and Senator Collins. I am going to ask our colleague who is the Chairman of the Subcommittee on Personnel, the Senator from Georgia, if he would take over now.

Would you, Senator Dayton, indulge our colleague from Maine to ask a question or two because she must join me, and we have to depart?

Senator DAYTON. I would be pleased to defer.

Chairman WARNER. Fine. Thank you very much for your courtesy.

Senator COLLINS. Thank you very much, Mr. Chairman, and I want to thank my colleagues for their courtesy.

Mr. Secretary, I, like my colleagues, am having difficulty in understanding your response to this very serious problem. I do not have the benefit that many of my colleagues on this panel have of a military background, but I do have the benefit of common sense. I am trying to understand how you can say in the Air Force press release issued March 26, which quotes you as saying that “As the problems regarding sexual assault allegations predate the current leadership, we do not hold General Dallager or Gilbert responsible.”

Similarly, General Jumper, you have been quoted as saying you do not believe that the problem starts with the current generation of leadership, but then you go on, both of you, to say that the responsible people will be held accountable.

Are you saying then that unless this problem originated on the watch of the leadership that they are not accountable?

Secretary ROCHE. No, Senator. What we are saying in the second part had to do with the Inspector General’s report, if something comes up where one or the other of these officers have done something for which they should be held accountable, they would be.

In terms of the larger question, when you have a succession of changes over time, you can hold the last group accountable, but they did not create the climate. The climate was created long before they got there, and they believe, Senator—and this is I am sure very difficult for others to recognize. They believe they were working at it. They did a number of things. It is not that they did nothing. They made a number of changes.

Senator COLLINS. Since when is it the standard that you have to have been there when the problem originated in order to be held

responsible or accountable? I just do not understand that line of reasoning.

Who are you going to hold accountable if you have already exonerated the current leadership absent some new findings by the Inspectors General? Who are you going to hold accountable?

Secretary ROCHE. Senator, I would take it as follows: Starting in 1993, measures were taken which they thought would correct things. They did not. I would, in this case, hold that administration accountable. Then as each turned over, every 2 to 3 years, each one of them had a chance to go back and fix this, and they did not. But they thought they were doing the right thing. They thought by having this system that was outside of the chain of command that that was taking care of the problem.

These cases that came up—and there were many more cases prior to the arrival of either General Dallager or General Gilbert. The larger proportion of cases occur well before them. So that it appears, even from the survey data, that things are getting better to them. But they, in the most recent survey, when they saw that the first class female cadets had little or no confidence in the system—although a number of the other cadets, the sophomores, juniors, and the freshmen seem to have reasonable numbers associated with them, but the seniors did not, they began to take additional actions to have additional training, to reinforce a number of other measures, measures to try to ensure that both the problem of assault and the problem of reporting assault were dealt with.

Senator COLLINS. Let me tell you what is so troubling, because what I am hearing you say is this problem has gone on for about a decade at least probably, and people have made good faith efforts to try to make some marginal improvements. All these assaults continued and, as a result, either everybody is responsible or nobody is responsible. That does not sound like a system of accountability to me.

When I read news stories such as one in the March 16 New York Times that recounts a story of a female former cadet who was raped and then the result is that she receives seven class D hits and was sentenced to 265 hours of marching in circles because she was drinking, this just reminds me of the whole approach of blaming the victim.

General Jumper, with all due respect, today you used the phrase “legitimate victims.” Is that as opposed to those who you apparently think have contributed to their assaults? I just think we have so far to go, and until we start holding people truly responsible—I do not care whether it is that someone inherited a problem. Presumably being part of the leadership of the Academy makes it your responsibility to correct these problems.

Secretary ROCHE. May I?

Senator COLLINS. Yes.

Secretary ROCHE. Senator, in the case that you report, I do not remember any particular news account, but that is a news account of one victim's position. Most of the time, there is another side to the story. If a cadet came forward and made an allegation, and there was not evidence to go forward in any Uniform Code of Military Justice process, then the Academy, as does the Naval Acad-

emy, goes back to the individuals who were involved and awards demerits.

At the same time, ma'am, sometimes there is not sufficient evidence to go to a court-martial to be able to prosecute an accused cadet, but there is enough administratively that comes out such that the cadet is disenrolled. In most of these cases, when they could, they did disenroll the cadets. They went the extra mile of ensuring that if something happened off the base, off the campus, if they could take the court-martial route, they did take the court-martial route.

Senator COLLINS. Mr. Secretary, my final comments to you today are this: When I hear you say that—I understand that there are cases where the evidence may not be strong enough to support a criminal conviction, but what I have seen and the cases that I have looked at is a very clear pattern of blaming the victim and of not correcting the overall culture or climate that causes the victim to be blamed. This is not just one or two cases. This is not just five or six cases. This is not even a dozen cases.

We have a clear pattern of reports of sexual assault where the reaction of the Air Force Academy seems to blame the victim, and that is unacceptable. We also have a clear pattern where it seems to me that no one is going to be held accountable for the climate that has made young women cadets fearful of reporting or leads to reprisal if they do, and that is unacceptable.

Secretary ROCHE. It is unacceptable, Senator. What I am trying to say is that in a number of these cases, there was another side to the case. I do not believe that there is a pattern of holding the victim and making the victim be the criminal in this case.

I know of one case where the Academy acted in ways that would be offensive to both you and me, where the victim reports something, she wishes to be separated from her accused, and they remove her from her squadron and move her to another unit when, in fact, they should have removed the accused. But they did not because, in prior instances, they had been told by counsel that they could not do that. So they were trying to do the next best thing which, in fact, had a very bad unintended consequence, which was to highlight the victim, as if the victim had done something wrong.

A lot of this is a function of the processes in place. We are going beyond the other academies; beyond the other academies in saying in order to make sure we cannot have any obstruction to finding out about criminal activity, we will grant the blanket amnesty to everyone, not just the cadet. Even if it comes out to be a "We cannot go forward with prosecution," we will still keep the amnesty in place. We will grant amnesty to other cadets who happen to be there except for the senior cadet or any cadet who blocks the investigation. We will go the extra mile.

Senator COLLINS. I want to thank my colleagues for their courtesy in allowing me to proceed. Thank you.

Senator CHAMBLISS [presiding]. Thank you.

Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman.

In a published news account, General Gilbert publicly acknowledged suggesting to one cadet who alleged she was raped that she had exercised poor judgment. According to the report, that case in-

volved Lisa Ballas, currently a senior cadet, who said she was assaulted in October 2001. Then she had a meeting with General Gilbert, reportedly that took place on April 8, 2002, about 6 months after she said she was raped.

According to Ms. Ballas, "It was somehow my fault this happened to me, full or partial blame," Ballas wrote in her e-mail, recounting her meeting with Gilbert. She quoted Gilbert as telling her, "You did not have to go to that party. You did not have to drink that night. You did not have to play the card game. You did not have to follow him back to the bathroom." Gilbert, in his written comments, confirmed that he made these remarks to Ms. Ballas. Ballas said that Gilbert scolded her for her behavior leading up to the assault, adding that "If I had my way, you would be marching tours," a form of punishment at the Academy, right next to her assailant. He did not deny making that remark. General Gilbert did not support a court-martial for Ballas' alleged assailant because of a lack of evidence, as was reported. The male cadet received minor punishment. She went on to say, "We have been made to feel that we are to blame for these incidents, and we have to fight against our own United States military."

In another report, "Once not very long ago, Kira Mountjoy-Pepka's eyes shone bright when she spoke of piloting airplanes. Few her age seemed to have so promising a future in aviation. But now when the conversation turns to flying, the former U.S. Air Force Academy cadet dips her head and stares at the floor. Ever since she says a fellow cadet raped her a year ago in her freshmen year at the Academy, her dreams of flying F16s and her love for the Air Force have crumbled. She was the first—in November 2001 she was chosen as the year's first freshman to fly an Air Force plane, roaring above the Academy's football stadium before a game. But her downward spiral began a year ago when a senior cadet whom she knew slightly from the Academy's Aero Club raped her in her dormitory room."

It goes on to say, "She struggled academically, athletically, she was emotionally devastated. She was harassed and hounded by the Academy's leadership for minor disciplinary infractions until she finally quit last Christmas. While Mountjoy-Pepka remains upset about these sexual assaults, she is angriest about her treatment by the Academy's majors, colonels, and generals, who she says turned the tables on her after she reported the assault. She said some officers criticized her for acting affectionately with her cadet boyfriend, another cadet. They said she was 'no lady' and suggested that her behavior was generally promiscuous."

Sir, I am astonished that you can say that the climate under those individuals in the last 18 months or 2 years has been substantially different if these kinds of incidents and these kinds of statements, publicly acknowledged by General Gilbert to have been made by him, are going on there. I think it is a perfect example of how this climate there has caused, in this case, two young women, their lives to be almost destroyed, certainly seriously damaged. She is out of the Air Force Academy. She is out, and she does not have that opportunity, and her male perpetrator goes on.

It is just shameful. To me, it is just shameful that it happens and it is even more shameful that the Academy and the people in

charge there let it happen and just now, even now, say give lip service that that general cared about things, but do not do a damn thing about it. Shameful.

Secretary ROCHE. Senator, the comment made by General Gilbert was most certainly insensitive.

Senator DAYTON. Insensitive?

Secretary ROCHE. He apologized for it, sir. The circumstances surrounding the cases, there are other sides to this. These are press reports of one side of a story, Senator. If, in fact, things—

Senator DAYTON. She is out of the Air Force, the young woman to whom that occurred.

Secretary ROCHE. She may well have left the Air Force Academy, sir. I do not want to get into any particular case, because of privacy rules.

Senator DAYTON. She brought her case to the public.

Secretary ROCHE. She brought it public. She is out.

Senator DAYTON. She brought the matter public. The both of them did.

Secretary ROCHE. But I can't—it would be wrong for us to give the other side of the story.

Senator DAYTON. All right. You had mentioned in 1993 that the new changes were put into place that were supposed to deal with this problem. According to another news account, in 1997 an annual survey of cadets showed that 10 percent of women responding said they had been the victim of a sexual assault in the Academy in the previous 12 months. Ten percent of the women responding said they had been the victim of a sexual assault at the Academy in the previous 12 months. Some 75 percent said that if they were raped, they would not report it, out of fear of retribution.

Now, I realize, sir, that you were not there during this time, but in terms of the culpability of former administrations, I would urge that the Inspector General's investigation or this independent investigation, which I am persuaded is absolutely necessary, to go back into this. If they instituted changes in 1993 and were told in an annual survey in 1997 that 10 percent of those responding, even if it is not a random sample, said they had been a victim of a sexual assault at the Academy in the previous 12 months, and they continued to believe that they had dealt with the problem, it just blows the mind, sir.

Secretary ROCHE. Yes, sir. I understand. One of the reasons we went back 10 years, Senator, is to be able to have as big a vacuum cleaner of these cases as we could, to look over the period of time.

Senator DAYTON. How about a vacuum cleaner for those who were responsible while this was going on?

Secretary ROCHE. It turns out with any given administration, you find a similar set of circumstances. But you do find them all trying to make use of what was done in 1993 and in 1996 in character development courses, in hotlines, in using the cadet sexual assistance program. You find them in each case trying to make these things work. We believe that by coming out of the chain of command they, in fact, in some cases had the unintended consequences of making them less effective.

Senator DAYTON. What changes were made subsequent to 1997 to this survey, to changes in the 1993 changes that were—clearly at that point not having the desired result?

Secretary ROCHE. I am not aware of anything that occurs between 1997 and last year.

Senator DAYTON. I would appreciate it if somebody could give me that, sir. I would like to know.

Secretary ROCHE. I do not think there were any major ones. They just kept trying to reinforce what they had, which they believed and had been told was the way to go. In terms of the particulars of a case, as I say, Senator, there are complications on both sides. But if, in fact, the events were as reported, which we can't back up in some cases—I do not want to say this particular case—then it is shameful. We agree with you.

Senator DAYTON. I am not trying the cases. I am trying, but I—individually, but the sheer number of them and this kind of a response, 10 percent of the women responding, and then as I say I would like to see what decisions—

Secretary ROCHE. We have looked at all the surveys, even those they considered not valid. We have looked at some of the comments of the cadets. You get them on both sides. Our sense is that there was a major climate problem, and that is why we have taken the forcible actions we have taken.

Senator DAYTON. I appreciate that you have done so. I am just saying that there is a lot more to be done.

Secretary ROCHE. But I agree with you on accountability. You would have to go back and look at that administration in 1997 and find the superintendent and the commandant, and whatever is done to the current two, you have to do it for those two as well.

Senator DAYTON. And that will be done?

Secretary ROCHE. We have asked the Inspector General to at any given case at any given period if there is something that we should go back and do, we will do it.

Senator DAYTON. One last set of questions, you have mentioned a couple of times, Mr. Secretary, the athletic department. Is there a set of circumstances that differs from the Academy as a whole or are there attitudes or actions there that go beyond what has occurred elsewhere in the Academy?

Secretary ROCHE. We have a sense, Senator, that there have been incidents associated with athletes that we are not proud of.

Senator DAYTON. What does it mean that you are not proud of?

Secretary ROCHE. There are reports that are being looked at right now of some of the behavior of some of the athletes. We know the athletes have a life that is very different than the average cadet, the intercollegiate athletes.

They do not play intramural sports. We do have training tables. In some cases, the information flow between the athletic department and the commandant's group running the rest of the Academy is such that someone dropped from a team can stay at the training table for a year and not be discovered, that the professional military education for the intercollegiate athletes was not being administered to the same degree it is for the others.

Yet in one of the climate surveys you have 43 percent of the intercollegiate athletes who responded say they felt prejudiced be-

cause they were intercollegiate athletes. Our sense was that athletics is a means to an end, not an end in itself, and therefore we wanted to bring it under the chain of command of the Academy more closely than it has been.

Senator DAYTON. Thank you.

Thank you, Mr. Chairman.

Senator CHAMBLISS. Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

I realize there is difficulty sometimes in assessing the degree of guilt as you suggest. So I wonder just what your attitude might be about relying on an outside source. For example, El Paso County is where the Air Force Academy is located. The district attorney in El Paso County has, or apparently is, reviewing a number of cases as to whether to move forward with some allegations of rape at the Academy or not.

What will be your attitude, Mr. Secretary, and that of the Air Force, towards those investigations? Should she decide to move forward, would you be helpful in trying to provide her with the facts that she would need to move forward with her case?

Secretary ROCHE. Yes, sir, absolutely. Our sense is, as we discussed at the Board of Visitors telephone conference, that we would re-look at the memorandum of understanding between the local jurisdiction and the Academy to see who should have a first chance to do something and who should investigate.

In the past, it has typically been deferred to the military because there was a higher probability of getting convictions with the military. But we would certainly cooperate with local authorities and provide the information that we had—or could have—to help her in her look, absolutely.

Senator ALLARD. Now, there are a couple of things that you have given comments on this afternoon that I have to disagree with you based on the information as I know it. I would like to go over it with you.

One of them has to do with whether General Gilbert, on wanting to move forward with prosecution, was overridden by the JAG. To me that does not make sense. My information tells me, it is my understanding the JAGs cannot override the commandant; only the superintendent of the Academy can do that.

From my understanding, it is that the JAG, when these cases came forward, asked the commandant if they could not move forward with prosecution, and his response was, "Oh, no. Do not worry about it. I can handle it."

Secretary ROCHE. Sir, I do not know anything about the latter, and I may have misspoken. The commandant in the one particular case did wish to go forward. An investigating officer, under Article 32 proceedings, did take a look at the evidence and told the commandant there was insufficient evidence to be able to go forward and get a conviction at court-martial and, therefore, they did not proceed with court-martial. Now, I would want to go back and look at the particular case to see if administrative actions were taken.

Whenever General Gilbert could go to the Uniform Code of Military Justice on a crime like this, he did. In this case, he felt that he would like to go forward; I know that. The judge advocate who

did the initial investigation said there was insufficient evidence to get a conviction.

Senator ALLARD. Some of the sources that have at least been talking to some of my staff, indicate that it was just the opposite; that he was, seemed to be willing to assume those responsibilities, and to disregard the recommendation of the JAG, but that is water under the bridge. I think we need to move forward.

The other area that I want to bring up is, it seems to me that when you look at the facts that there was an emerging problem as we got closer to 2003—and I know that the climate surveys have been disregarded by the Academy to a certain degree, but they are the only information that we have.

When we look at 1998, we have 22 cadets that were classified as having been sexually assaulted since having arrived at the Academy. In 1991, there is no climate survey; 2000, there are 17 cadets; 2001, the number is 167 cadets; and 2002, there are 56 female cadets who said they had been sexually assaulted since arriving at the U.S. Air Force Academy. Then in 2003, the Academy decided not to have a survey or not to ask the question on the survey as to whether they have been sexually assaulted or not.

It seems to me that if you look at 2001 and 2002, those numbers are so much larger than the rest of the trend, they should have raised a flag.

Secretary ROCHE. They obviously did, Senator. In fact, looking at both of those, you recall they had had very poor participation in surveys up to that point. At that point they started to try to pressure cadets into, in fact, filling out the surveys. It was the sense of the statisticians who looked at them that they were invalid because of contradictory answers. A number of the answers in the sexual area were contradictory.

The 2003 one that was released in January was considered to be a valid one. General Gilbert, in fact, briefed all the cadets. He then instituted yet additional actions, including things like—I do not know if he did in 2002 or—in 2002, he was already putting more supervision into the dorms, et cetera. So they were using those.

What more they could have done when they looked at a particular survey where they were told that it was invalid, I am not sure. I found by comparing the surveys, the trends in the surveys, you have the oddity that the women cadets report that the fear of reprisal decreased between 2001 and 2002, whether it was for reprisals from the faculty or from other students, et cetera. So it is a small trend, but it was—I was seeing mixed things. I saw these less than 24 hours before you saw them.

Senator ALLARD. Mr. Chairman, my time is running short here. If you would just bear with me, I would like to ask another question.

Senator CHAMBLISS. Sure.

Senator ALLARD. A number of cadets reported sexual assaults and rapes to my office, and we are at 40, it has been reported. About half of those occurred in 2001, 2002 from the information we have in our office. This is not the surveys or anything else.

We have looked at when those alleged rapes occurred. A number of them occurred during a summer camp at Jacks Valley Training Center, which I understand is the basic training for incoming ca-

dets. You made recommendations of dealing with the dorms and everything. I did not see any recommendations dealing with what action you may take during this training period.

I wondered if, for the record, you would not elaborate on—maybe General Jumper would be the one to do this—what it is that you are going to do to assure safety of the new cadets in the Academy during their basic training.

Secretary ROCHE. We are taking action, Senator.

General JUMPER. Senator, first of all, the Secretary and I have written a letter to the parents of each of the new incoming cadets talking to them about our commitment to dealing with this situation. The new incoming cadets will be separated initially, male and female, and will be put through a training period where they will be indoctrinated into the situation that they are finding themselves in, which is much different than the situation they have just left, if they have come from any civilian walk of life, about the power structure of the Academy, the relationship between the upper class and the lower class, the limits on that, and their rights to object to bullies.

We are putting the responsibility for this training of the new cadets into the hands of the senior class. The senior class will be responsible for administering the discipline. The discipline will be aligned with the development of character, of honor, and of the sorts of traits and virtues and integrity that we expect cadets to have.

This will happen for a certain period of time over the summer. We are waiting for the new commandant to get in place, and we will determine exactly how long this should be.

Before the rest of the cadet wing arrives back for the academic year, they will then be integrated into their squadrons. Then once into the squadrons, the females will be grouped down near the latrine area in the squadron with squadron integrity to be able to provide each other mutual support.

Senator ALLARD. Now, it has been my understanding, General, that it has been upperclassmen who have raped female cadets in these training camps, so I do not understand exactly how this is going to protect the female cadets.

Secretary ROCHE. The senior class is going to be made responsible for observing the actions of the other two classes towards the freshman.

Senator ALLARD. I see.

Secretary ROCHE. Not just for the summertime, because it is mostly the senior two classes who are back for the summer program, but for the whole cadet wing when they come back. They have to be made responsible for the character, and the honor, and the integrity of the entire corps. That is their position as senior cadets; not only as the senior class, but as class cadet officers in charge of squadrons and in leadership positions. That will be the test of their leadership.

How they help us get through this change in the climate that needs to be instilled in these young cadets, and it will be taught to the young cadets from the time that they get there, this is a major effort that I, along with the Secretary, will see that it is installed personally by my personal involvement with the classes.

Senator ALLARD. How does that differ from what is happening now or has happened last year, for example?

Secretary ROCHE. They come in and they generally have a couple of days where they get some indoctrination, but as a new freshman in that disciplined environment that you are not used to, most of the things that are said to you the first couple of days, as you can understand, Senator, go right over your head. The retention level is not good, because they are in a fairly disciplined and new and harsh environment. This will then continue for a much longer period of time than has been done in the past.

General JUMPER. Also, Senator, you notice in our paper we talk about getting the Air Officer Commanding much more involved, and in terms of supervision of the dorms, et cetera, they will also be much more involved in the summer activity to make sure that things are handled correctly.

Senator ALLARD. Thank you, Mr. Chairman. I thank the members of the committee.

Senator CHAMBLISS. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

As the two witnesses can tell today, this is a very personal matter for members of the United States Senate. I know Senator Clinton and also Senator Collins and others have said that it is because—one of the greatest things about being a Senator is being able to have a hand in the selection process of sending our best and brightest young men and women to the military academies. So you can tell from the questioning, the deep disappointment and dissatisfaction with what we have heard about what is going on at the U.S. Air Force Academy.

I have three points of clarification. First, with regard to the surveys, are these mandatory or are they voluntary? I am just confused about this. I have gotten the impression different times, different ways.

Secretary ROCHE. They were in the past voluntary. The participation was so low that there was some positive incentives offered 1 year to get them to do more. Then in the 2002 survey, the sense is the cadets were told they could not sign out on vacation until they completed the survey. Consequently, a number of them played games with the survey.

Senator PRYOR. Okay. Are these surveys given to every cadet at the Academy?

Secretary ROCHE. They are Internet surveys available to every cadet, and every cadet is encouraged to take the survey.

Senator PRYOR. Okay. Is the survey designed by the Air Force or by a third party?

Secretary ROCHE. The survey is designed not by the Air Force, but by a department at the Academy, so it does not have the professional development that you would have with either a survey organization or the one that is used for a climate survey for the Air Force at large. That is why each year you notice, they have a self criticism of how they can improve it. It is the behavioral science department that was doing this and trying to get a sense of the human relations climate.

Senator PRYOR. Okay. My second point of clarification: I just want to make sure I understand this. Are you coming here today and testifying before this committee that the problem is fixed?

Secretary ROCHE. Not in any way, shape, or form, Senator. We are saying that we have made the first step. That point that was raised by some members on our prior visit in closed session, we absolutely agree with. If we thought this was fixed, no, it is not. It is one of the reasons we want to talk this over with the Board of Visitors, how to monitor it. We have put in place that every 3 years there will be a full and complete audit, so we have no problem reporting anything to the committee, et cetera.

It is the beginning. You are trying to change your cultural climate. It has had us look at the entire Academy from signs saying "Bring Me Men," to how professors are dealt with, to where cadets go after they graduate, to how they are treated relative to our other accessions. We have looked at the whole thing. But this is merely a beginning.

Senator PRYOR. Do you have at this point a written action plan about the steps you intend to take to get it fixed?

Secretary ROCHE. Yes, sir. We issued that in a directive memorandum to the superintendent of the Air Force Academy last Wednesday.

Senator PRYOR. Have you provided it to the committee?

Secretary ROCHE. Yes, sir, we have.

[The information referred to follows:]

[See previous insert, "United States Air Force Academy: Agenda for Change."]

Senator PRYOR. Okay. I will be sure and get a copy of that.

The third point of clarification I just want to seek is: Are you opposed to a third-party investigation of what has gone on at the Air Force Academy?

Secretary ROCHE. No, sir. What I wanted to do was to start ourselves so we could move quickly, because we have new cadets coming in 90 days. If we had tried to put together something from the outside, we would still be working on a charter and working on the personnel. We moved very quickly.

Having gotten these first steps in place, which I believe communicates to the parents of any new cadet that that cadet is safe when he or she arrives come June, we have no problem with outsiders looking at it, and I would hope that in the Board of Visitors meeting this would be discussed, and I would be delighted to cause one to occur.

Senator PRYOR. When is that Board of Visitors meeting?

Secretary ROCHE. I am not sure. It is within the next 30 or 35 days.

Senator PRYOR. Okay. If there is a third party, would you rather it be someone like a local prosecutor there in Colorado, or would you rather it be more of a, for lack of a better term, blue-ribbon panel that might look at it?

Secretary ROCHE. My sense is we have a wonderful Board of Visitors, which have some wonderful members on it, like Senator Alard and a few others, including former governors. I would like to talk over with them what they think would be best, since they have invested so much of their time in the Academy.

Our sense was to move quickly. It had to be people who understood the Air Force, understood Air Force rules, and that we could move fast in going forward. It could be characterized any number of ways, but it would have to be one that would be effective. I think the Board of Visitors would be the appropriate group to talk about who ought to be on, including some of them.

Senator PRYOR. It is obviously unfortunate what has happened to some of these men and women during this time period who have gone through the Academy. I think perhaps the most unfortunate thing of all is that the Academy produces the future leadership of this organization.

It is a very fine organization. I can speak for this committee to say we want to support our men and women in uniform. We want to support the Air Force and all the branches of the Service, but when we hear something like we have heard today, when we hear about the climate and the culture at the U.S. Air Force Academy, I know that we all have a grave concern that it is going to corrupt the entire organization.

I just want to encourage you to work on the solution with all deliberate speed. This committee stands ready to help you in whatever way we can to do it. I think having a third-party investigation is essential to getting to the bottom of this. I want to encourage you to consider doing that.

Secretary ROCHE. Yes, sir. You understand that the Office of Secretary Defense's Inspector General is a third party, and we not only welcomed, we had hoped at one point they could take a look at all of the cases, so that there was no sense of the Air Force covering anything up.

In terms of specifics, whether it is how to do a mentoring program, et cetera, we welcome outsiders, and we recognize fully this reflects on the entire Air Force. This is not our only source of our future leaders, but it is one of the two major sources of our future leaders.

Senator PRYOR. Right. I agree.

That is all I have, Mr. Chairman. Thank you.

Senator CHAMBLISS. Thank you.

Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman.

I am struck by the fact that this is at least the third time that we have discussed this; I think twice in open session, once in a closed session. As became apparent today from the reports I received, I think it is clear, Mr. Secretary and General Jumper, at least in the minds of many of us on this committee, that it has still not been put to rest with respect to looking backward at the individual cases that have been brought forward for public attention; nor with respect to looking forward to the changes that are necessary in the culture, atmosphere, and training.

I think a third-party investigation and a third-party consultative relationship with the Academy is absolutely essential. There are people who are experts in this field who advise major corporations. There are people who have advised other academies with respect to some of these issues, and I would certainly hope that if you take away from this hearing anything, it is what I believe to be an over-

whelming sense of the committee that there must be independent third-party involvement.

I do not think from my own perspective that the Inspector General is adequate. I do not think the Board of Visitors is adequate. I think setting up some kind of mechanism where people can be brought in to deal with the deep-rooted cultural issues and to go through some of the training programs that have proved successful in other parts of society has to be a part of whatever solution you decide to pursue.

So from my perspective, I join the call of the chairman and the ranking member and others on this committee in urging you to quickly move to an independent third-party consultative investigative response mechanism.

We are in the middle of a war. This should not be taking up your time. This is not what you should be coming up to testify before this committee about.

From the recent articles I have read, it appears that the Air Force actually has a higher percentage of women than the other branches. We are very proud to see the young women who are flying combat missions over Iraq. This is not what the Secretary of the Air Force and, frankly, the general should be spending any more time on. The only way you will be able to put this to one side is to go ahead and to make the decision to have a totally independent look at this.

Let the chips fall where they may. Let us figure out what else needs to be done. The directive is filled with very good goals and important language about the values of the Air Force and the Academy, but in order to get from where we are to where we need to be, there is some good work that has been done over the last 30 years in this field that I think would be very beneficial.

I would urge you to look to that. There are some of us who might be able to make some suggestions. I know that in some of the major challenges I think the Naval Academy faced in 1993, and some of our major corporations have faced in similar workplace environmental challenges, there are a group of very distinguished, responsible advisors who could immediately come in and lend credibility and provide that independence that I think we desperately need.

Secretary ROCHE. Senator, I have absolutely no problems with that at all. Those two parts, I liked how you separated into the consultative and the independent look. In the consultative area, we have received letters from people who have volunteered, some of whom have done this before. I know in corporate life it has been done.

By creating the additional duties of ombudsman for the vice commandant and then sitting down with her and speaking to her, one of the things we want her to do is, in fact, to reach out and to bring someone in. Now, they have done some of that, but I do not think with the sense of urgency that we would now want there to be.

In terms of having a group take a new, fresh look at the whole Academy, once we have these initial steps in place so that we did not have to wait for 6 months, then I am quite content to do that, and I would hope to raise that with the Board of Visitors as to

what the composition of that should be to take a look at the longer term.

We felt we had to do something quickly to assure the families of the cadets who were coming, roughly 218 young women coming in in June, for a total of about 714 in the cadet wing. We wanted to put things in place so that we felt comfortable in June.

But certainly as you and I discussed before, this is the first step, and we have no problem bringing in outsiders.

Senator CHAMBLISS. Secretary Roche, you have been on the job for about 2 years, and General Jumper, longer than that. While this was not initiated on your watch, it is in your lap. I think you can see the sentiment of virtually everybody who has anything to say, that somebody from the outside needs to look at it.

Now, very honestly, what you have done to this point in time, I think is commendable. I think you approached it exactly right. If you had gone ahead and gotten a third-party group outside, you are right, Mr. Secretary, antics would be ongoing as you tried to put an organization together.

You have approached it right. You have done what you should have done. But I think it is probably time that you come back to the committee with some sort of recommendation as to where you think you need to go, because otherwise it is pretty obvious, I think, the committee is going to act, and with your recommendations, it would make it a lot easier.

There is one other group we had not talked about that I hope is very much in your minds as you are going through this. That is the alumni. They have helped create the climate that exists at the Air Force Academy. I have read some reports on some particular situations where alumni have made it well known that when they were at the Air Force Academy. They did not have any females there, and they take great pride in that. The male ego tends to do that sometimes.

The fact of the matter is we have some outstanding young women who are not only cadets but are serving in the Air Force. We all know that. To try to further any kind of attitude that this should be a male-only club just certainly exacerbates the problems. So I know you are thinking through that, but we had not mentioned that today. I think obviously it needs to be given very serious thought as we move forward.

Secretary ROCHE. We have had a meeting with the local alumni that was not always congenial in the course of 3 hours, where we stood up and took our shots and received them. We are appalled by that baseball cap with letters from the Class of 1979. We have made it very clear that we will not tolerate that, and we just do not think that any of the alumni should.

The alumni, many of them, very much agree with us that things have gone on over a long period of time, and it was time to shed a fresh light and look at this. We are going to be communicating with them by letter.

We will also be doing an article in the alumni magazine on this issue, and trying to make them part of the solution instead of any part of the problem, if they are part of the problem.

General JUMPER. Sir, if I might add, the Secretary and I also plan a trip to the Air Force Academy where we will stand before

the second class, which will be the seniors next year. On the stage with us will be one member of each of the graduating classes of the United States Air Force Academy. Included among them will be astronauts, former Chiefs of Staff of the Air Force, pro football players, and others from all walks of life who have gone out and been immensely successful. The power of the alumni has been offered to us to back us up in our endeavors here.

Senator CHAMBLISS. One other thing that has been mentioned over and over again, but it is not the primary focus of what we are talking about, is the situation that in a number of particular instances I noted it is repeated that alcohol played a significant role. I do not know what we are doing with respect to concentrating on eliminating that problem in the future.

I know you have talked about it a little bit, and I have seen your regulations. I know, General Jumper, you talk particularly about putting the senior person, whoever the senior person is at a party or a gathering or whatever, as the person in charge. But there obviously has to be a concentrated effort made to eliminate alcohol use particularly when we are throwing female and male cadets together.

Secretary ROCHE. Sir, we have rules that we want to re-emphasize about alcohol in the dorms on campus, underage drinking. We will differ from the other academies. We have met with the superintendents, the secretaries of the other Services, the chiefs of the other Services to go over all of our preliminary findings of what we are going to do, and we will take tougher measures on the provision of alcohol to anyone who is under age in that we will disenroll a cadet who does so immediately. That is not the case at the other academies. They usually give them one chance.

We feel that we have to make the alcohol issue a very pointed one, because so many of the problems seem to have alcohol associated with them.

Senator CHAMBLISS. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

I think there is one statement which you have made repeatedly and before today, which really creates problems with maybe all of us on this committee, and that is the statement that you made publicly that you cannot hold commanders accountable for failure when the climate has been in place for a long time. I think everyone on this committee that has commented on this has just simply found that totally incredible and unacceptable.

You cannot simply say to people that because something has happened that way when you got to the job, that it is acceptable for you to do nothing about it if it is wrong and when it clearly was wrong, as this climate has been.

I urge you to review that statement that you have made publicly and that you have tried to defend here today unsuccessfully, because I think everybody here has a real problem with that premise. People are accountable for what happens on their watch. If they have tolerated a climate where women are discouraged from coming forward to complain about sexual assault because they think they will be victimized when they do so, that is so totally intolerable, so totally out of keeping with what the existing current procedure is supposed to be at the Academy, much less what you have

put in place. It just has to be reviewed by you, and I think corrected, because that is the one statement here that I think, as much as anything that you have said, is just causing some massive concern and reaction on the part of members of this committee.

Do you know what the procedure is in the Army and the Navy relative to that issue in terms of your new amnesty provision?

Secretary ROCHE. Yes, sir. If I can go to the first point, I will certainly take a look at it again, Senator. As I understand my responsibilities, it will mean going back through a series of superintendents and commandants.

Senator LEVIN. I do not know why you keep saying that. Whatever it means, it means. If people have not carried out their responsibilities properly, if that leads to other people who have not carried out their responsibilities, so be it. You can't just say that it is tolerable for people or acceptable or that somehow or other you are not going to act against folks who have not carried out their responsibility because their predecessors did not carry out their responsibility. If you hold people accountable now and that will require you to hold others accountable, so be it.

Secretary ROCHE. Yes, I understand, sir.

Senator LEVIN. Whatever it leads to, it leads to. It is sort of a mantra here, and I do not get it. I do not understand. The fact that something is inherited and will lead to other folks who also did not carry out their responsibility, that is just absolutely no excuse for not holding folks accountable for not carrying out their responsibility. You have repeated that half a dozen times. I do not think it will work if you repeat it another half a dozen times.

Secretary ROCHE. I will review it, sir. I will review all the past people as well. If, in fact, the same thing applies for a consistent application of standards, I will apply it consistently to all.

Senator LEVIN. Do what is appropriate, sir.

Secretary ROCHE. I understand.

Senator LEVIN. But do not exonerate the current folks who are in command because that will lead you to other folks who have been in command. If it does, it does. Wherever it leads you, take it. You cannot say, "We are not holding this person accountable because that means we have to hold someone else accountable." I mean, that does not wash.

Secretary ROCHE. Sir, it was not that. I did not mean to say that at all. It is more a matter of where do you start with holding people accountable for climate, and where do you end? I take the point, and I will look at it all and do it appropriately.

To your question of the other academies, the process of holding cadets accountable for infractions of Academy standards or regulations associated with an incident is the practice of the Naval Academy, as well. So if someone reports a crime at some point, the midshipmen who were involved, whether it be friends or, in fact, potentially the victim, especially if it leads to a situation of no prosecution, will be awarded the appropriate demerits, et cetera. As I have reviewed it with the Superintendent of the Naval Academy, it is almost the identical process.

However, I believe where we have failed is the fact that we, in some cases, did not wait for everything to be complete but more importantly, Senator, we did not give feedback to the cadet who came

forward with the charges to explain what had happened. We did that because the officers involved were told that they would be violating privacy rights. It turns out they were wrong, but that was the advice that they had been given.

Senator LEVIN. Mr. Chairman, I think it would be very important for this committee to send out to the other secretaries the amnesty provision which is now in place in the Air Force.

Secretary ROCHE. I have given it to them, sir.

Senator LEVIN. I see.

Secretary ROCHE. I have given it to them. They have it.

Senator LEVIN. All right. Then it is important, I would hope, for us to ask the other secretaries whether or not they are going to adopt the same provision because, unless you assure people who come forward with a complaint of sexual assault that if that is not proven in a criminal case, that action will not be taken against them because there was excessive drinking. I mean, that is an absurd result. It means again, as Senator Collins said, you are punishing the victim. The test that you cannot proceed in a criminal case is a totally different standard. It has just nothing to do with this issue.

Secretary ROCHE. Sir, I completely agree with you.

Senator LEVIN. All right.

Secretary ROCHE. Absolutely, yes.

Senator LEVIN. Then I think it would be up to our Chairman as to whether we ask the other Service secretaries to give us their reaction to the new language, which has been adopted in the Air Force. It seems to me that language, by the way, I think has been in effect in the Air Force for all intents and purposes when I read what the current standard is—but whether or not it has been in effect or not is not the point here. It is now in effect, and I think it is important that they be the same standard in the other Services, so we make sure we end this absurdity of discouraging people from complaining about sexual assaults against them.

My time is up. Thank you, Mr. Chairman.

Senator CHAMBLISS. Senator Levin, I do know that Senator Warner in coordination with you is planning on getting all branches back up here to make sure that we have some common standard out there that everybody is adhering to.

Senator Allard.

Senator ALLARD. I thank you, Mr. Chairman.

I want to get back onto this issue of prosecution. What is the penalty for rape on Federal property according to military justice?

Secretary ROCHE. I am not sure. I am sorry. Can I ask General Counsel, if I may?

Senator ALLARD. Yes. [Pause.]

Secretary ROCHE. I think it depends on whether it is—

Senator ALLARD. There was an article written in the paper that rape on Federal property could result in the death penalty, and they cited a case in 1963 where there was an Austrian woman that was raped and then the perpetrator in the case, a military man, was actually given the death penalty. Is that true?

Ms. WALKER. I do not know about that specific case, sir, but there could be instances in which under certain aggravation, the penalty could rise to that level.

Senator ALLARD. Just for the record, the Counsel has said that there are certain situations with aggravating circumstances that could result in the death penalty.

Is that what you are saying?

Ms. WALKER. That is my understanding, sir.

Senator ALLARD. That is your understanding.

Ms. WALKER. We can provide that information for you.

Senator ALLARD. I would appreciate it if you could provide that to the committee.

[The information referred to follows:]

Aside from Article 120 of the Uniform Code of Military Justice (title 10, U.S. Code, section 120), there is no Federal crime of rape. There is a provision (title 18, U.S. Code, section 2241) that criminalizes "aggravated sexual assault" (which encompasses rape) that occurs "in the special maritime and territorial jurisdiction of the United States or in a Federal prison." The penalty under this section can extend to life in prison. The "special maritime and territorial jurisdiction" includes Federal property over which the Federal Government exercises exclusive or concurrent jurisdiction (title 18, U.S. Code, section 7). The Air Force Academy is a concurrent jurisdiction enclave.

In addition, State criminal laws (including those related to rape and sexual assault) apply on Federal property within the United States, either directly or as assimilated into Federal law by the Assimilative Crimes Act (title 18, U.S. Code, section 13). The penalty for rape on Federal property in the United States under the Assimilative Crimes Act is the penalty applicable in the State where the Federal property is located.

For military personnel, the Uniform Code of Military Justice (UCMJ) provides a uniform criminal code applicable worldwide. Article 120 of the UCMJ (title 10, U.S. Code, section 920) provides that "Any person subject to [the UCMJ] who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct." The last executed death sentence in an Air Force rape case was carried out in 1954 following a conviction in 1948 under the Articles of War (a predecessor of the UCMJ). The last time the death sentence was carried out for rape under the UCMJ was in 1961 in an Army case. However, it is important to note that in addition to rape, these cases involved convictions of murder and attempted murder, respectively.

In 1977 the Supreme Court, in *Coker v. Georgia*, 433 U.S. 584, held death to be a "grossly disproportionate and excessive punishment for the rape of an adult woman," and hence "forbidden by the Eighth Amendment as cruel and unusual punishment." Whether the death penalty continues to be available for the rape of a minor remains unresolved. Other punishments that a court-martial can adjudge in a rape case include punitive discharge from the Service (dismissal, dishonorable or bad conduct), imprisonment, reduction in grade, and forfeiture of pay.

Senator ALLARD. Now, to follow up on that, what steps is the Air Force taking to better prosecute these cases?

Secretary ROCHE. The first step is to ensure the victim can come forward, and the second step is to ensure that when the victim comes forward that there is a lawyer and a member of the Office of Special Investigations, who work for the vice commandant, who can sit down with that victim so that the individual understands the elements of a crime and that which needs to be proven, so as to be able to collect the correct amount of evidence as soon as possible and not have the situation go off out of the chain of command for many months, which has happened in the past, and then to come back when, in many cases, it is much too late.

So the issue is to be able to start immediately to put together evidence which would lead to a successful prosecution if, in fact, a prosecution could be obtained.

Senator ALLARD. I would hope that they would use some good common sense processes. For example, the loss of a rape kit, that is just that people are not properly keeping track of the evidence.

I would hope that there is an effort in there to make sure that the chain of evidence is protected in some way or another.

Secretary ROCHE. Excuse me, Senator. I do not know if the General Counsel came upon anything, but I have not heard of us, other than that press account, losing rape kits. I know they are thrown away when there is no prosecution.

Senator ALLARD. There was one individual that reported her case to us, and we tried to get evidence about her complaint, and the response back from the Air Force Academy is that they had lost her rape kit.

Ms. WALKER. I remember that. My team looked at it, and to date they have found no rape kits that were lost. It could have been a miscommunication, but the investigation thus far has found none that were lost.

Secretary ROCHE. I agree none should be. There should be a chain of custody of these, and usually there is a chain of custody.

Senator ALLARD. We have a letter from the Air Force concerning the loss of a rape kit from OSI. We have some information we need to share on this. I hope that we can set up some procedures where that does not happen. OSI seems to think it has happened, and we have a letter that says it happened.

Secretary ROCHE. If things are done within the chain of command, Senator, you have a heck of a lot better chance for that not occurring, for things not being lost.

Senator ALLARD. Okay.

General JUMPER. One of the steps, Senator, if I might add, is to get these consulting mechanisms that are outside the chain of command to first encourage the victim to come into the chain of command and, as I said, to be able to deal with the emotional side of this so that there can be confidence that when they come to the chain of command it will be dealt with in the right way.

Senator ALLARD. I agree with you. We have to create the environment where the victim feels comfortable in reporting the rape or the sexual assault case that occurs. But the next step is to be able to protect that chain of evidence.

Secretary ROCHE. Absolutely.

Senator ALLARD. I would hope that the Academy looks at working with the local district attorney or having somebody on the staff who understands how you can protect the evidence so that when you have to go to court or what not, you have the information you need to make these set of cases hold up. One of the comments that you have made rather consistently is the cases seem weak or not. It could be because there was inadequate collection of evidence. That seems to me like that is an important thing that needs to be looked at.

Secretary ROCHE. It's certainly the case when there is a 4-, 5-, 6-month delay between the incident and when it is reported. Remember, we have some that are 2 years old.

Senator ALLARD. The other question I want to bring up and talk with you a little bit, and you have alluded from time to time that the cadets have a certain responsibility with this problem. Have you consulted with the cadets to see if they have any suggestions? If so, can you share some of their thoughts with us?

Secretary ROCHE. The investigative team has. I have talked to some cadets. General Jumper has. In many cases, the ones with whom I spoke, a number of them believe that they have an obligation to do a better job of identifying people who they know have done something wrong. The issue that I think they are quite ashamed of is some of the ostracization that occurs, the shunning, when a victim comes forward, that the little comments that are made to that end—that is why in our agenda for change, we require that the cadet leaders of squadrons be held responsible for ensuring that does not occur.

General, some points?

General JUMPER. I have met also with several focus groups at random and carefully selected among the cadet leadership. I have found that the majority of them are responsible. I have found outrage on the part of most cadets that this is caused by a very few, and the many are getting punished. I have not much sympathy with that observation in that it is the cadets who are there who have a chance to be a responsible part of the changes that we have underway.

I found quite frankly some cases where “If you fire this person and this person, and leave the rest of us alone, we will be just fine,” which, again, is—I find disturbing, in that this lack of ability to accept a certain amount of responsibility among a certain minority of cadets.

Now, these are the things we are working on, Senator, to make sure that the burden is felt and understood by the cadets that are there.

Senator ALLARD. I think every member of this committee, including myself, has raised the question: Why is it that we have a problem like this at the Air Force Academy and we do not appear to have this kind of a problem at the other academies? I wonder if you have asked yourselves that and if you have come up with any solutions or any observations that you can share with this committee.

Secretary ROCHE. The benchmarking I did principally was with the Naval Academy, because it had a process that was very similar, with the following exception: At the Naval Academy as on any of our Air Force bases, if someone comes forward with an allegation of sexual assault—and recognizing that the Academy’s definition is very broad, in fact, too broad, it would include an unwanted kiss, for instance, it could be construed as sexual assault as compared to the more legal definitions of indecent assault, sodomy or rape, at the Naval Academy you can’t make a report that does not go into the chain of command system. Now, you can make the report to a chaplain, to a set of counselors, to the company officer who is comparable to an Air Officer Commanding, at any one of about five or six positions. We have paralleled that. That is one major difference, that you do not have something go off into a consulting group or a counseling group that is associated with a particular department in the institution.

Senator ALLARD. That is what was happening in the Air Force Academy, as opposed to the chain of command?

Secretary ROCHE. There were a number of cases where things did not get into the chain of command. For instance, at the Air Force Academy, depending on how the cadet and the counselor felt, the

commandant could be told there was an incident, but not be told who was the victim and who was the alleged perpetrator, unless the commandant then forced, or the superintendent, to have that information divulged. This is the whole issue of privacy as compared with confidentiality. Whereas, at the Naval Academy, once it is reported, you surround the victim, as does any one of our airmen at one of our bases, and the process goes forward.

The second thing is the Naval Academy did not have the problem of feedback to the accuser, where at the Air Force Academy there was a false sense of violation of privacy rights, and which had limited how much information was provided to the accuser, the victim, so that she might know what had gone forward, why there was no Uniform Code of Military Justice process.

In a number of cases, the individuals who were accused were investigated, given polygraphs, and passed the polygraphs. It is not clear that any of the victims were ever told that, so that they would understand that there are two sides to this, and that the other side has or at least the individual thought there was consent. That is another difference.

The issuing of demerits for Academy violations, as I say, existed at the Naval Academy, and we have decided to do away with that, so as to be able to ensure we receive information.

In terms of any kinds of shunning, they put the responsibility on the senior midshipmen to ensure that does not occur, and we are putting responsibility on the senior cadets to make sure it does not occur. So we have tried to go through what their processes are.

Senator ALLARD. Mr. Chairman, I have been informed we have a vote going.

Senator CHAMBLISS. We have just a couple of minutes left.

Senator ALLARD. So I know—you want to stop this. So I just—again, I reiterate that this is—we cannot tolerate this.

Secretary ROCHE. I agree.

Senator ALLARD. I think you agree with that.

Secretary ROCHE. Yes.

Senator ALLARD. We need to take some very meaningful steps. I think that you have taken a first step. I think we need to continue to evaluate and look at it. I think that those of us that are on this committee in future years have a responsibility to keep our fingers on this pulse. I think that probably each one of you recognize that this is not going to go away in 1 year. We have to keep after it. So I just ask that you work with the committee, because this is a serious problem we need to get eliminated as quickly as possible.

Secretary ROCHE. We absolutely agree, Senator, and thank you for the help you have given us.

Senator CHAMBLISS. Gentlemen, thank you all very much for being here and helping us deal with this very sensitive problem. I thank you for your leadership. Thank you also for what you have done for our men and women in Iraq today.

We will continue to work with you as we move down the road to make sure that we all have great confidence in every single nominee to the Air Force Academy and every other academy. Thank you.

Secretary ROCHE. Thank you, Senator.

General JUMPER. Thank you, Senator.

Senator CHAMBLISS. Thank you. We are adjourned.

[Questions for the record with answers supplied follow:]

#### QUESTIONS SUBMITTED BY SENATOR JOHN MCCAIN

##### AIR FORCE ACADEMY SURVEYS

1. Senator MCCAIN. Secretary Roche, what can you tell me about surveys that were conducted at the U.S. Air Force Academy in 1997, 1998, 1999, 2000, 2001, and 2002?

Secretary ROCHE. The Academy has included various questions about sexual assault, gender climate, and sexual harassment in its annual climate surveys since 1996. The results of these surveys are being considered by the Working Group that I chartered to examine sexual assault issues at the Academy and will be discussed in the Working Group's report.

2. Senator MCCAIN. Secretary Roche, what conclusions could be reached from these surveys about reports of sexual harassment, sexual assault, and rape?

Secretary ROCHE. These surveys are still being analyzed by the Working Group, and I'm reluctant to draw any firm conclusions without the benefit of their analysis. It does appear, though, that these surveys, if properly interpreted, could have served as a warning that a significant number of cadets were concerned about the gender climate and sexual assault.

3. Senator MCCAIN. Secretary Roche, when are you going to make these critical surveys available to this committee?

Secretary ROCHE. This survey data will be included in the report of the Working Group, which will be available to the committee as soon as it is completed.

4. Senator MCCAIN. Secretary Roche, a survey reports that 10 percent of the women said they were sexually assaulted, 75 percent of the women in that command said to you that they were afraid to come forward in cases of rape because of the reprisals that they would endure, and 16 women were brave enough to actually come forward and report cases of sexual assault and rape. Why did you decide to dismiss these surveys outright or to dismiss them as statistically not valid?

Secretary ROCHE. We have not dismissed these surveys. As I said previously, they are being considered and analyzed by the Working Group that I chartered to consider sexual assault issues at the Academy. We have some concern about the statistical validity of these surveys because of survey methodology, sample size, and a number of anomalous responses (some cadets appear not to have taken the surveys seriously). We are concerned in particular about our ability to infer trend data from them, because the survey questions and other methodology changed from year to year. That doesn't mean, though, that no useful information can be derived from them. We will be able to provide more information about the utility of these surveys when the Working Group completes its report.

##### BEHAVIOR OF THE OFFICER CORPS

5. Senator MCCAIN. Secretary Roche, if this type of behavior has been going on for at least 10 years and there is a climate at the Air Force Academy that suggests that cadets are afraid to come forward to report cases of sexual misconduct and rape, in what manner have you also begun to examine the behavior of the officer corps?

Secretary ROCHE. The data we have gathered so far suggests that, to the extent the climate at the Academy has discouraged some cadets from reporting instances of sexual assault, it has largely been due to factors that the Academy environment has exacerbated, including peer pressure and victims' apprehension (whether or not well-founded) that they may be disciplined for infractions of Academy rules associated with the incident. There are no indications that similar conditions are prevalent in the officer corps at large. We will remain vigilant, however, for evidence that any aspect of this problem may have "bled over" into the larger Air Force.

##### DISCIPLINARY ACTION AGAINST LEADERSHIP AT THE AIR FORCE ACADEMY

6. Senator MCCAIN. Secretary Roche, have you reprimanded or disciplined the leadership at the U.S. Air Force Academy?

Secretary ROCHE. As you are aware, I have replaced the leadership team at the Academy. I did so because I believe new leadership can most effectively implement the changes General Jumper and I have directed at the Academy in our Agenda for Change, announced on March 26, 2003, and any future changes we may find appropriate after receiving the reports of the Working Group, the Air Force and DOD Inspectors General, and the review group recently mandated by Congress. I have not reprimanded or disciplined anyone and at this point, with several reviews and investigations of the Academy situation incomplete, I do not think it would be appropriate to do so. I intend to take another look at this issue when all the relevant information is in.

#### OUTSIDE PANEL INVESTIGATION

7. Senator MCCAIN. Secretary Roche, please discuss your views on the establishment of an outside panel similar to that set up at the Naval Academy to look into the serious circumstances facing the Air Force Academy. Please include a discussion of why you have rejected the creation of such a panel up to this point, and explain more fully your recent comment to the press regarding how your Harvard Business School training has led you to believe only an internal review is needed.

Secretary ROCHE. I have no objection to an outside review of the circumstances at the Air Force Academy and welcome the fresh perspective that the review group recently mandated by Congress will bring to bear on the situation. At the outset, though, we needed answers quickly, and the best way to accomplish that was through an internal review. Accordingly I chartered a high-level working group, under the leadership of the Air Force General Counsel, to review circumstances at the Academy relating to sexual assault. The Working Group has largely completed its review, which has been both thorough and impartial, and is preparing its report, which will be made available to committee when it is completed.

[Whereupon, at 6:25 p.m., the committee adjourned.]

# REPORT OF THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE UNITED STATES AIR FORCE ACADEMY

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WEDNESDAY, SEPTEMBER 24, 2003

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:48 a.m. in room SR-325, Russell Senate Office Building, Senator John Warner (chairman) presiding.

Committee members present: Senators Warner, McCain, Allard, Collins, Chambliss, Dole, Levin, Reed, Akaka, E. Benjamin Nelson, Dayton, Clinton, and Pryor.

Committee staff members present: Judith A. Ansley, staff director; and Pendred K. Wilson, receptionist.

Majority staff members present: Gregory T. Kiley, professional staff member; Patricia L. Lewis, professional staff member; Ann M. Mittermeyer, counsel; Scott W. Stucky, general counsel; and Richard F. Walsh, counsel.

Minority staff member present: Gerald J. Leeling, minority counsel.

Staff assistants present: Michael N. Berger, Andrew Kent, and Nicholas W. West.

Committee members' assistants present: Christopher J. Paul, assistant to Senator McCain; John A. Bonsell, assistant to Senator Inhofe; Jayson Roehl, assistant to Senator Allard; Lindsey R. Neas, assistant to Senator Talent; Clyde A. Taylor IV, assistant to Senator Chambliss; Christine O. Hill, assistant to Senator Dole; Mieke Y. Eoyang, assistant to Senator Kennedy; Elizabeth King, assistant to Senator Reed; Davelyn Noelani Kalipi, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; William Todd Houchins, assistant to Senator Dayton; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

## OPENING STATEMENT OF SENATOR JOHN WARNER, CHAIRMAN

Chairman WARNER. Good morning, all. I welcome this very distinguished panel. Congresswoman Fowler and members of your panel, thank you for your public service. Well done. As we say in the Navy-Marine Corps: well done, ma'am.

I have been fortunate, as have other members of the committee, to have worked with Congresswoman Fowler for many years. She

was on the counterpart of this committee in the House of Representatives and a real leader in military affairs. It is fortunate, not only for the Air Force, but for the country, that you and your colleagues took on this very challenging task.

I have known several members of the panel very well. Colonel Ripley is a distinguished Marine Corps officer. I was not a distinguished Marine Corps officer, but a marine anyway, but never in any way that could match his career. General Bunting was, of course, head of VMI in our State; and others on the panel that I have come to know through your distinguished reputations and your wonderful job on this report.

We meet today to receive testimony on this report of "The Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy." That is a frightening title, but this panel was created by the Congress of the United States. These fine Senators on my right and on my left determined at one point in time that an unbiased, unaffiliated group of our citizens had to be brought together under the strong leadership of you, Congresswoman Fowler, to make this assessment for Congress. You have done just that.

So we thank you very much, particularly for the forthright and fair manner in which you identified failures of leadership. Failures of leadership is a tough thing to say to any member of the United States military, but you had the courage to gather the facts and to reach those conclusions.

Hopefully, your work will prevent any such behavior being repeated, not only at the Air Force Academy, but at West Point and at Annapolis. Those three institutions are the crown jewels of their respective branches of service. There is a very close identification between those educational institutions and the Congress of the United States. Every member on this panel takes a lot of time to select from literally hundreds of individuals who come to each of us seeking nominations to those academies. We work very industriously to nominate only the best and the finest. This is not an institution, the academy structure, that is just out there. This is a part of the daily activities of every Member of the United States Congress.

As I say, we owe you a debt of gratitude. We were all shocked, not only Congress but America, and distressed by the allegations of alleged sexual assaults at the Air Force Academy, which first came to the attention indeed of Congress—and this is a unique function of Congress. When the executive branch has failures, people in this country turn to their Members of Congress to ask them to examine the situation. That was precisely what was done here.

Before you testify, I would like to set forth for the record the sequence of events as I understand them—and other members will have their views, but I think we are unanimous on this—that led to the establishment of this panel. In January 2003, Senator Allard, whom I want to commend, came to us and brought certain correspondence and statements to the attention of myself and other members of the committee.

He particularly informed me about a female cadet who asserted that she had been raped at the United States Air Force Academy and who alleged that officials at the Academy had attempted to prevent an investigation of this incident. Senator Allard and I, at

that time, wrote letters both to the Department of Defense and to the Department of Defense Inspector General (DODIG). We will have more to say about that, asking that they look into this allegation.

We purposely went to the DODIG because we felt there had to be a measure of independence within the Department, even though the Department of the Air Force had begun its own investigation.

In response to these allegations, Secretary Roche formed a working group headed by the General Counsel of the Air Force, Mary Walker. Her nomination came before this committee for advice and consent and from all we know she is a very capable, able professional. The task of the working group was, "to review cadet complaints and the policies, programs, and practices of the Academy."

Secretary Roche and General Jumper testified at a hearing on March 6, 2003, about the progress of the General Counsel's investigation. Secretary Roche promised the report and recommendations for change would be submitted to Congress by the end of March 2003.

While the Air Force working group was conducting its investigation of over 50 female cadets who had come forward with allegations of sexual misconduct, members of this committee learned of additional allegations of reprisals against victims of sexual assaults at the Air Force Academy, who had reported attacks against them. These reports included "shunning or ostracizing of victims by fellow male and female cadets."

The committee learned of a profound lack of trust and confidence by female cadets in the former superintendent and the commandant of the Air Force Academy to respond appropriately to allegations. Perhaps most surprising in view of the fact that women have attended the Air Force Academy for over 25 years, and taking into account the strides made to eliminate sexual harassment overall in the Armed Forces over the past decade, this committee learned of allegations of a climate of hostility towards women at the Academy and acceptance of that climate—I repeat, acceptance of that climate—by cadets, faculty, and Air Force leadership.

On March 26, Secretary Roche and Air Force Chief of Staff Jumper publicly announced their "Agenda for Change" at the Academy. They directed changes at the Academy designed to correct conditions that contributed to abuses. A surprising aspect of their announcement, however, was Secretary Roche's determination that "as the problems regarding sexual assault allegations predate the current leadership, we do not hold Generals Dallager or Gilbert responsible," and a press release to that effect was issued by the Department of the Air Force.

On March 31, at a full committee hearing of this committee on the problems of the Air Force Academy, Secretary Roche repeated his assertion that the Air Force Academy leadership would not be held accountable for the very serious problems at the Academy and would not be replaced. Members of this committee at that hearing expressed our deep concerns about the direction in which Air Force leadership was going at that time and the lack of accountability.

Secretary Roche subsequently changed course 180 degrees and transferred the superintendent, the commandant, and other Academy officials. In addition, in July of this year he recommended the

former superintendent be retired at a lower grade. But the Secretary's initial assessment and conclusions clearly indicated that an independent panel such as yours, Congresswoman Fowler, was needed and Congress acted swiftly to make that happen.

The legislation establishing this panel was drafted by Senate Armed Services committee members and included in the Emergency Wartime Supplemental Appropriations Act for Fiscal Year 2003. Recognizing the urgency of the situation, the panel was given only 90 days to do its task as best it could, and we recognize the shortness of time. But, having read this report, I think you met the challenge.

On June 17, a few days before the first meeting of this panel, the Air Force released the General Counsel's working group report. The conclusion of that working group that there was "no systematic acceptance of sexual assault at the Academy," "no institutional avoidance of responsibility," and "no systematic maltreatment of cadets who reported sexual assault" has justifiably been challenged by Congresswoman Fowler and her colleagues on this panel.

The Air Force General Counsel's conclusion in her report that "a less than optimal environment to deter and respond to sexual assault or bringing assailants to justice" existed at the Academy demonstrates the protective mentality that undermined the efforts within the Air Force and the working group to deal with the problem.

Therefore, before this committee right now is the question, does the working group's decision, which was not to specifically address the accountability of various Air Force leaders, both military and civilian, regrettably, undermine the usefulness of their report? Who made that decision? We will find out.

At this point, I would like to address the pending nomination of Secretary Roche. It is submitted by the President and the Secretary of Defense and is before this committee. The committee will work together on this. I will ask for the opinions of each member of the committee as to how this rather unique nomination is to be handled. But the point being, it is before the committee and certain aspects of his accountability or nonaccountability are before this committee as part of our advise and consent proceedings.

I will address several specifics now that were raised by your report. While issues relating to accountability of Air Force leadership are still being reviewed by the DODIG, I have expressed my concerns about proceeding with the Senate consideration of the Roche nomination. I did so to the White House. I have released the letters. I wrote the President's Counsel and asked him if Congress is on notice that the executive branch is examining the accountability of a nominee that has been submitted by the President, can we in good faith proceed with the nomination until such time as all actions by the executive branch are completed? That letter has not yet been answered by the Counsel to the President.

So we will have to review that situation. But I point out that I am in no way indicating any bias one way or another on the Roche nomination. I simply have a duty as chairman to consult with my members and to reach our own conclusions. But I point out in your report, you task the Inspector General (IG) to specifically examine

the question of accountability regarding the top leadership of the Department of the Air Force. Am I not correct?

Ms. FOWLER. Yes, sir.

Chairman WARNER. So we have to determine the IG's actions on that. Now, the IG did write to the committee and indicated at this time he had no evidence before him to raise questions about Secretary Roche. But as you say, he has not yet completed his work. You indicate that in your report.

Senator Levin.

### STATEMENT OF SENATOR CARL LEVIN

Senator LEVIN. Mr. Chairman, thank you. Let me first join you in thanking, congratulating, and commending Congresswoman Fowler and her colleagues on the panel for their thorough and comprehensive review of the longstanding problems with sexual misconduct at the Air Force Academy. It is an impressive report, particularly because this panel had only 90 days to conduct an investigation and to prepare the report.

All Senators nominate young men and women from our States to the Service Academies. Each of us does so with the belief that we are placing these young adults in a safe and secure environment where they will receive a first class education and where they will be groomed for officership in our Armed Forces.

Earlier this year, we heard of a pattern at the Air Force Academy of victims of sexual assaults being discouraged from reporting the incidents, that their complaints were not fully investigated, that they were ostracized by other cadets, and that they, the victims, were punished by the Academy for infractions brought to light only because they reported that they had been assaulted.

In the words of the panel, the leadership at the Academy and the Air Force headquarters "failed to respond aggressively and in a timely and committed way to eliminate causes of serious problems, and that was a failure of leadership." As a result, the panel went on, "female cadets entrusted to the Academy have suffered, sexual offenders may have been commissioned as Air Force officers, and the reputation of a fine institution has been tarnished."

Our first order of business has to be to ensure that appropriate changes are made at the Air Force Academy to provide a safe and secure environment for cadets. This involves specific policy changes to improve the Academy environment, as well as efforts to hold leaders accountable where the facts reflect a failure of leadership. This report provides the basis for the Air Force to urgently and strongly address this longstanding problem and it will assist us as we oversee these actions. Accountability is the key to change. Without it, change will be less certain and will be slower.

The report's conclusion is compelling. "In addition to holding accountable those leaders who fail the Academy and its cadets," the report says, "the Air Force must permanently change the Academy's institutional culture and implement command and oversight improvements that will identify and correct problems before they become ingrained in the fabric of the institution."

Again, I want to thank you, Congresswoman Fowler and each of her colleagues, for this is extraordinarily well done.

Chairman WARNER. Before we begin, I would like to submit the opening statement of my colleague, Senator Cornyn.

[The prepared statement of Senator Cornyn follows:]

PREPARED STATEMENT BY SENATOR JOHN CORNYN

I would like to commend Congresswoman Tillie Fowler and the other members of the Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy for their thorough and outstanding work in preparing the report before the committee today. This report provides us many vital recommendations to overhaul the manner in which the Air Force Academy handles sexual assault reporting and to create an environment free from all forms of sexual harassment. I look forward to working with Chairman Warner and other members of the Armed Services Committee to study these recommendations for implementation and to provide the necessary oversight to ensure that we resolve the problems at the Air Force Academy.

As noted in the report, "during the 10-year period from January 1, 1993 through December 31, 2002, there were 142 allegations of sexual assault at the Academy, for an average of more than 14 allegations per year." Furthermore, the Department of Defense Inspector General disclosed that a May 2003 survey of Academy cadets showed that 80.8 percent of females who said they have been victims of sexual assault at the Academy did not report the incident. That is simply unacceptable.

I am deeply saddened and troubled by these findings, and I believe we must make every effort to ensure that the Air Force Academy environment is free from the fear of sexual harassment. In those unfortunate cases when sexual harassment does occur, the victims must have the appropriate avenues to report these crimes and receive the necessary counseling. Finally, the perpetrators of these crimes must be held accountable and punished to the fullest extent of the law. These despicable acts and the environment of fear they incite have no place in our Nation's military, at any level. We cannot and must not tolerate an atmosphere that does not promote the well-being of our cadets.

I am also deeply concerned by the panel's finding that "the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action." The young men and women who serve in our Armed Forces rely on the judgment of their leadership for guidance and training. Leadership that does not respond to serious problems under its command is guilty of a crime of equal measure. This leadership, whether present or former, must be held accountable for the failures of command at the Air Force Academy.

As noted by Congresswoman Fowler in her testimony, "change will not happen overnight, nor will it be truly effective without a sustained, dedicated focus by Academy officials and senior Air Force leadership." Although the panel noted that they were impressed with the leadership of Secretary Roche and General Jumper, it is absolutely crucial that the Air Force continues to pay necessary attention to this problem. We cannot allow for another failure of leadership to occur when the public spotlight fades.

I concur with the panel's conclusion that "the reputation of the Air Force Academy, and by extension the Air Force it serves, depends on finding a lasting solution to this problem." I will work with Chairman Warner and the Air Force leadership to ensure that the Air Force Academy will have a safe and secure learning environment for all cadets. We cannot afford to allow the problems of the past to continue.

Chairman WARNER. We will have a 7-minute round for each Senator so that time would be available to incorporate such opening comments as you would like to make. So we will now proceed, Congresswoman Fowler, to receive your report on behalf of the committee.

**STATEMENT OF HON. TILLIE K. FOWLER, CHAIRMAN, THE PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT THE UNITED STATES AIR FORCE ACADEMY; ACCOMPANIED BY PANEL MEMBERS: LT. GEN. JOSIAH BUNTING III, USA [RET.], ANITA M. CARPENTER; LAURA L. MILLER, PH.D.; MAJ. GEN. MICHAEL J. NARDOTTI, JR., USA [RET.]; COL. JOHN W. RIPLEY, USMC [RET.]; AND SALLY L. SATEL, M.D.**

Ms. FOWLER. Thank you, Mr. Chairman. I appreciate your having this hearing today. Before I start into my statement, I wanted to tell you what I thought of today when I walked into this room. It is a very historic room. I am from the State of Georgia originally and Senator Russell was a good friend of my family's and I knew him well at one point in my life. So it is an honor to be in this room and in this building.

Thank you again for having this hearing today. I want to first introduce officially the members of this outstanding panel, because this has been a panel that has really worked diligently. We would not have made it within the 90-day timeframe if everyone had not been involved in this really almost full time to get this report done.

To my left is Dr. Sally Satel, Colonel John Ripley, General Mike Nardotti, and to my right, Ms. Anita Carpenter, General Si Bunting, and Dr. Laura Miller. They have each really worked hard, and their only agenda was to ensure that every cadet at the Air Force Academy had a safe and secure learning environment. That is what we have tried to do through our recommendations.

I would also like to recognize the absolutely wonderful staff that we have. If they could just stand briefly. They are on the front row here. They really were the backbone of this, and they have worked many long nights and hours to get this done within the timeframe. They did an outstanding job putting this together and doing the investigatory work and the interviews that needed to be done. So I want to thank them, too.

Chairman WARNER. Congresswoman Fowler, I would ask that you put into your record this morning the names and the positions of each of these staff members, because the hearing record will be printed up and I think that many people across the Nation would like to express their appreciation to your staff.

[The information referred to follows:]

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Ms. FOWLER. We will do that, Senator, thank you. I do have, in the back of the report in the appendix is a list of all of them, too, and their titles. But we will add that for the record also today.

I want to thank you for holding this important hearing and giving me the opportunity to report to you in person on the findings of our panel, as required by section 501 of Public Law 108-11. I know of your leadership and the leadership of this committee in instituting this panel. So I really appreciate it. I think there was definitely a need for this panel. The Senate Armed Services Committee and the House Armed Services Committee really worked together to have this established, and I think we will see today there was a reason for it.

Mr. Chairman, there is a quotation I found when I was doing some of the work on this, that Socrates likened one's reputation to fire when he said, "When once you have kindled it, you may easily preserve it. But if you once extinguish it, you will find it an arduous task to rekindle it again."

Since the first cadets arrived at the U.S. Air Force Academy in 1955, nearly all have lived by the core values of the United States

Air Force: integrity first, service before self, excellence in all we do. By doing so, they kindle the kind of reputation for the Academy that we would expect of such an institution.

While not extinguishing it, the sexual assault scandal that has plagued the United States Air Force Academy recently has certainly tarnished the reputation of this great institution. We appear before you today to continue the arduous task of restoring both confidence in the Academy and safety for its cadets.

Mr. Chairman, women have served our Nation admirably in times of war and in times of peace. They have graduated from the Air Force Academy since 1980 and served their country with distinction, even paying the ultimate price. I would like to call your attention to Section 6, Row F, Number 13. No, it is not a reference to a particular section of our panel's final report. It is not a seat in Falcon Stadium at Colorado Springs. Section 6, Row F, Number 13 is located at the U.S. Air Force Academy Cemetery. It is the final resting place of Academy graduate First Lieutenant Laura Piper. Lieutenant Piper was killed in the line of duty when her Blackhawk helicopter was shot down over northern Iraq on April 14, 1994, just 2 years after graduating from the Air Force Academy.

What our panel has learned about the treatment of some women at the Air Force Academy is an injustice to all who have gone there, women and men. It is not befitting of the sterling reputation kindled for so long by more than 35,000 cadets from 44 classes who have graduated from this institution. Quite frankly, Mr. Chairman, it is simply an insult to the career and the memory of First Lieutenant Laura Piper.

When a new round of sexual assault allegations at the Academy surfaced earlier this year, this committee wisely decided to take a new approach to a problem that has plagued the Academy for at least a decade and quite possibly for as long as women have attended the institution. You, along with your colleagues in the other body, insisted on the creation of an independent panel of seven private citizens to, according to the public law, "carry out a study of the policies, management, and organizational practices, and cultural elements of the United States Air Force Academy that were conducive to allowing sexual misconduct, including sexual assaults and rape, at the United States Air Force Academy."

On May 27, 2003, using the criteria established in the law, Secretary Rumsfeld appointed the seven members of our panel, and I am pleased that they are all with me today, as I have introduced them earlier. I think it is important for the members of this committee to know that this all-volunteer force could not have been more serious, more dedicated, and more determined to solve this problem. I think the best way to describe their dedication is to say that each approached this effort as if their own daughter was a cadet at the Academy today.

As a result, the panel's final report offers substantive and constructive recommendations to rebuild the Academy's commitment to its cadets and to the American people. Our priority was to help ensure a safe and secure learning environment for all the Academy's cadets.

Unfortunately, the environment at the Academy has been anything but. The statistics are appalling. During the 10-year period from January 1, 1993, through December 31, 2002, there were 142 allegations of sexual assault at the Academy—these are known allegations—for an average of more than 14 allegations a year. That is unacceptable for an institution training our Nation's future military leaders. Let me be clear: one incident is unacceptable.

The roots of this crisis go as deep as the institution's culture. We found the most striking indicator of the existence of a hostile environment for female cadets in the Academy's own survey data, data that was simply dismissed by leadership because it was "unscientific." Just last year, more than one-fourth of the responding male cadets stated that they did not believe that women belonged at the Academy. One cadet fourth class wrote, "Even with women in the Armed Forces, they should not be at the Military Academies." Another, "Women are worthless and should be taken away from the United States Air Force Academy."

These comments are even more unsettling when you consider that women have been at the U.S. Air Force Academy since before these young men were even born. Representative Heather Wilson had already graduated from the Academy and earned a Rhodes Scholarship before they celebrated their first birthday. Eight years before they would arrive at the Academy, graduate Laura Piper was returning for the last time. These young men have no memory of an Air Force Academy without women, yet somehow they believe it should be that way.

When such beliefs cannot be attributed to experience, they must then be attributed to character and values. These are learned traits and when an institution of higher learning finds warning signs like these in its surveys, scientific or not, that institution has a problem and an obligation to correct it. This report outlines the steps the Academy must take to strengthen its character development programs.

Panel members experienced the gravity of this crisis first-hand during our visit to Colorado Springs. We were stunned to hear stories from victims, many still too afraid to go public with their stories and, more disturbing, too afraid to make an official report of the crime. They shared with us how their lives had been torn apart by violent assault and an aftermath that most of them suffered alone and in silence because of an atmosphere of fear and retribution by peers aided by either indifference, incompetence, or a combination of both by an Academy leadership that they believe failed them.

Our closed-door experience with these victims is what drives our concern with the Agenda for Change policy that eliminates any form of confidential reporting of sexual assaults. The panel is very concerned that stripping away all confidentiality takes the Academy backwards to 1995, when the lack of confidentiality resulted in underground support groups and unreported crimes. The panel believes that a balance must be maintained between the support and treatment of victims and the prosecution of assailants. Confidentiality is the fulcrum on which that balance can exist and it must remain an option for all victims of sexual assault at the Academy.

The Agenda for Change overlooks an established form of privileged communication that is currently available throughout the Armed Forces and could benefit cadet victims: the psychotherapist-patient privilege. This method of confidentiality has been available to the Academy since the psychotherapist-patient relationship was recognized in 1999 by Presidential Executive Order and implemented in Military Rule of Evidence 513. It is in use by both West Point and Annapolis.

Accordingly, we recommend the creation of a program that combines the existing CASIE program, which stands for "Cadets Advocating Sexual Integrity and Education" with a trained victim advocate psychotherapist managing the program. This would ensure that the Academy has available to all sexual assault victims an established form of privileged communication within which to report their assault.

Giving victims choices helps them regain a sense of control over their lives and promotes the healing process. Having a trained psychotherapist explain the consequences of their choices also increases opportunities for making the right choices, thereby further helping to encourage the reporting of these crimes. The Academy should not be the only Service Academy not to offer this form of confidential reporting.

The sexual assault problems at the Academy are real and continue to this day. But the panel is encouraged by a renewed emphasis in Washington to immediately address and solve this problem. We are impressed with the leadership of Secretary Roche and General Jumper, a much-needed addition after a decade of inaction and failures.

Secretary Roche made a step towards serious reform this year by rolling out his Agenda for Change and replacing the Academy's leadership team with one that has been quick to take action. Though the members of this panel want to be clear, the Agenda for Change should be seen as a blueprint, an initial step in reversing years of institutional ineffectiveness.

Each of our panel members agrees that change will not happen overnight, nor will it be truly effective without a sustained, dedicated focus by Academy officials and senior Air Force leadership. The very culture of the Academy must be altered before real change can be maintained for future generations.

The panel found that a consistent flaw in previous attempts to address this problem, and a flaw that allowed it to happen in the first place, was the lack of external oversight. The panel recommends the Board of Visitors operates more like a corporate board of directors. We recommend the formation of committees with specific oversight responsibilities, such as academic affairs, student life, and athletics. We recommend a minimum of four meetings a year, two of those to occur at the Academy. We also recommend that all board members have unfettered access to the Academy grounds and the cadets.

This committee should also more aggressively exercise its oversight authority by reviewing reports on the Academy called for in our recommendations and the reports that you are calling for in the 2004 defense authorization bill.

I would like to draw the committee's attention to panel recommendation number 4, in which we recommend revising the law to expand the available pool of potential candidates for the position of the dean of faculty beyond the Academy's permanent professors. There is a time sensitivity issue here. In order to benefit from this reform in the selection of the next dean of faculty, which will occur as early as next spring, I would urge this committee, should you concur with our recommendation, to revise the law in the 2004 authorization bill presently in conference. Otherwise, under normal rotation schedules this reform could not be effective until some time around 2007.

Now, I want to draw your attention here to this timeline. You also have it. It is the very last exhibit in your report, that is a foldout. If you might not be able to read it from where you are we have it in there, too. We spent a lot of time going through chronicling this crisis, because the question was who knew what, when, and what were they trying to do about it. So this timeline really lays it out. It lays out the crises and the failures of leaders to effectively and aggressively respond.

The warning signs were there, as you will see, year after year, but they went unnoticed or they were ignored. We are here to report that this panel found a deep chasm in leadership during this most critical time in the Academy's history, a chasm that extended far beyond its campus in Colorado Springs. Sadly, we believe this helped create an environment in which sexual assault became a part of life at the Air Force Academy.

Any credible assessment of sexual misconduct problems over the last 10 years must include an examination of the responsibility of both Academy and Air Force headquarters leadership. Unfortunately, the Air Force General Counsel's working group report failed to do that.

That is why this panel recommends that the DODIG conduct a thorough review of the accountability of the previous leaders at the Academy and Air Force headquarters. This should include an assessment of General Gilbert, General Wagie, and Colonel Slavec, as well as former leaders of the Air Force itself. We recommend that the results of this review should be provided in a timely manner to both the members of the Senate and House Armed Services Committee and to the Secretary of Defense.

Now, I want to point out that the panel has recommended that the DODIG investigate the previous leadership. While we offer what we believe is some constructive criticism of the changes instituted by the present Academy and Air Force leadership, we have found neither team lacking in their understanding of the seriousness of the crisis or in their commitment to find a lasting solution.

It would not serve the interests of the Academy or its cadets to distract the present leadership with a backward-looking investigation. Rightly so, the Secretary, the chief of staff, the superintendent, and his team are focused on the future of this great institution, and the effective resolution of this matter requires that their focus remain there.

We recognize the difficulty in holding accountable those who have left their positions of leadership, and particularly those who have left the military service altogether. However, given the mag-

nitude of this situation and to set a clear example of the level of performance expected of future leaders, this panel has concluded that every effort should be made to formally document the failure of former leaders and to ensure that documentation becomes a part of their official military records.

In total, this report contains 21 specific recommendations that this panel believes can put the Academy back on track and allow it to live up to its potential as a unique institution of higher education that also trains future leaders of our Air Force. Some are already in various stages of implementation. Others can be implemented administratively at the Academy or at Air Force headquarters, while some, such as number 4 mentioned earlier, will require legislative action.

While Congress will not necessarily play an implementation role in all 21 of our recommendations, we would urge you to play an oversight and evaluation role in our recommendations as well as those found in the Agenda for Change and the working group report.

Now, I have to say, of course, always a source of envy to those of us who are former House members, but well-suited for the oversight task, your 6-year terms of office give you a unique ability in our Government to track the long-term progress of all these efforts aimed at solving this different problem.

So as this panel concludes its work, it is our sincere hope that while their leaders make every effort to solve this difficult problem, the vast majority of cadets will continue to strive to live by the core values of integrity, service, and excellence. It is and should always be an honor to call oneself a cadet at the United States Air Force Academy.

That concludes my remarks, Mr. Chairman. The other panel members do not have any opening remarks. We are available to answer any questions that you or the committee might have.

[The Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy follows:]



Report of  
The Panel to Review  
Sexual Misconduct Allegations  
at the U.S. Air Force Academy

September 2003

# **Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy**

SEPTEMBER 22, 2003

**Panel to Review Sexual Misconduct Allegations  
at the United States Air Force Academy**

**AN OPEN LETTER FROM THE CHAIRMAN**

September 22, 2003

This report is the result of the first investigation by an independent body of a problem that has plagued the U.S. Air Force Academy for at least a decade and quite possibly since the admission of women in 1976. At the direction of Congress, the Secretary of Defense appointed seven private U.S. citizens with expertise in the United States military academies, behavioral and psychological sciences and standards and practices relating to proper treatment of sexual assault victims.

Based on the fact that these were the qualifications for the Panel members, we understood our charge was to undertake an investigation and to make recommendations with a single priority in mind: the safety and well-being of the women at the U.S. Air Force Academy. From our first meeting, I have been impressed with the manner in which each member of the Panel has approached this difficult and complicated matter with a single-minded determination to understand the plights of the victims in order to find a solution – a solution that puts the victims first, either by preventing sexual assaults or by providing victims recourse to a process and procedures that will support the victim and prosecute the assailant.

I want to thank my fellow Panel members who volunteered and devoted their time and energies to this solemn task. Each one of them contributed in a unique manner, and this final report is a testament to both their talents and their ability to work with the other members of the Panel toward a common set of observations and recommendations. This has truly been a case of the whole being greater than the sum of its parts.

This report, however, represents more than the hard work and dedication of the seven members of the Panel. We could not have completed this task in the time allotted without the incredible effort of our talented staff. Like the Panel members, these are people who took time away from their regular professional responsibilities to devote their talents and energies to finding a solution to a problem that has plagued the Academy for too long. On behalf of the Panel, I want to offer them my deepest gratitude and sincerest thanks for a job well done.

While I believe that the recommendations contained in this report are the beginning of the solution to the problem of sexual assault at the U.S. Air Force Academy, they are just that: a beginning. It is clear from our review of nearly a decade of efforts to solve this problem that the common failure in each of those efforts was the absence of sustained attention to the problem and follow-up on the effectiveness of the solution. Whatever steps are taken by the Academy, the Air Force, the Department of Defense or the Congress as a result of this report, it is absolutely critical that those actions be reviewed sometime after their implementation by those in a position to objectively evaluate their effectiveness. The women of the U.S. Air Force Academy deserve no less.

Sincerely,



Tillie K. Fowler  
Chairman

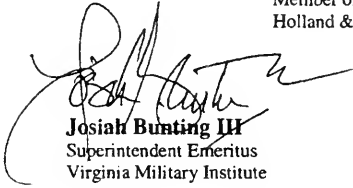
**Panel to Review Sexual Misconduct Allegations  
at the U.S. Air Force Academy**  
1235 Jefferson Davis Highway, Suite 940  
Arlington, Virginia 22202

To the Senate Armed Services Committee  
To the House Armed Services Committee  
To the Secretary of Defense

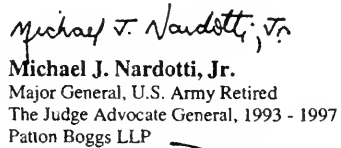
We, the appointed members of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, do hereby submit the results of our findings and offer our best recommendations to improve the policies, procedures, and climate at the Academy.



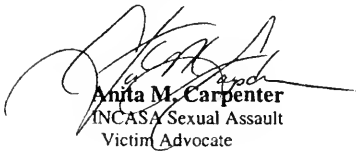
**The Honorable Tillie K. Fowler, Chair**  
Member of Congress, 1993-2001  
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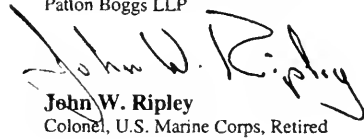
**Josiah Bunting III**  
Superintendent Emeritus  
Virginia Military Institute



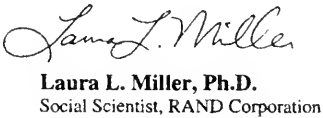
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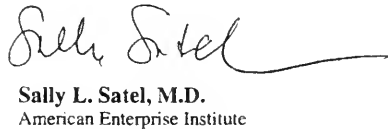
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## I. EXECUTIVE SUMMARY

The United States Air Force Academy is an institution with a proud tradition of service to our nation. The Academy is responsible for the education and training of future officers who will lead our military forces. The Academy's mission is to "inspire and develop young men and women to become Air Force officers with knowledge, character and discipline; motivated to lead the world's greatest aerospace-force in service to the nation". This national interest requires the Academy and its governing leaders to be held to the highest of standards.

The first class of women cadets arrived at the Academy 27 years ago and helped to begin an era of men and women standing together to defend our nation and its freedom. Today, women comprise about one-fifth of our Armed Forces, and their admirable performance and dedication allows our nation to maintain an all-volunteer force.

Sadly, this Panel found a chasm in leadership during the most critical time in the Academy's history — a chasm which extended far beyond its campus in Colorado Springs. It is the Panel's belief that this helped create an environment in which sexual assault became a part of life at the Academy.

The Air Force has known for many years that sexual assault was a serious problem at the Academy. Despite that knowledge and periodic attempts at intervention, the problem has continued to plague the Academy to this day. The regular turnover of Air Force and Academy leadership, together with inconsistent command supervision and a lack of meaningful and effective external oversight, undermined efforts to alter the culture of the Academy. During the ten-year period from January 1, 1993 through December 31, 2002, there were 142 allegations of sexual assault at the Academy, for an average of more than 14 allegations per year. Academy and Air Force leaders knew or should have known that this data was an unmistakable warning sign and quite possibly signaled an even larger crisis.

For example, a February 14, 1997 presentation by the Academy to the Air Force Inspector General ("Air Force IG"), Air Force Surgeon General and the Judge Advocate General of the Air Force acknowledged that statistically, as few as one in ten rapes is reported to authorities. Recently, the Department of Defense Inspector General ("DoD IG") disclosed that a May 2003 survey of Academy cadets showed that 80.8% of females who said they have been victims of sexual assault at the Academy did not report the incident.

Over the past decade, the Academy and Air Force leadership had increasing cause for alarm, and should have aggressively changed the culture that allowed abuses to occur. Unfortunately, Academy leadership acted inconsistently and without a long-term plan. As a result, female cadets entrusted to the Academy have suffered, sexual offenders may have been commissioned as Air Force officers and the reputation of a fine institution has been tarnished.

The sexual assault problems at the Academy are real and continue to this day. According to the May 2003 DoD IG survey of female cadets (Classes 2003–2006), 18.8% reported they have been victims of at least one instance of sexual assault or attempted sexual assault in their time at the Academy. Included in this number are 7.4% of female cadets who said they were victims of at least one rape or attempted rape while at the Academy.

Other recent indicators of problems in the institutional culture are found in the Academy's own survey data, which showed that one in five responding male cadets do not believe that women belong at the Academy. Clearly, the Academy's gender climate has changed little in the past ten years.

Recent widespread media attention caused the Air Force to address the problem of sexual assault at the Academy. In March 2003, Air Force Secretary James G. Roche and Air Force Chief of Staff General John P. Jumper announced a series of directives and policy improvements at the Academy known as the *Agenda for Change*. The new policy corrects many of the conditions contributing to an environment that tolerates sexual misconduct. However, the *Agenda for Change* is only a blueprint, and should be viewed as the initial step in reversing years of institutional ineffectiveness.

In April 2003, Secretary Roche made a step towards serious reform when he replaced the Academy's leadership with a new leadership team comprised of Lieutenant General John W. Rosa, Superintendent; Brigadier General Johnny A. Weida, Commandant of Cadets; and Colonel Debra D. Gray, Vice Commandant of Cadets. Subsequently, General Rosa and his staff have begun implementing changes in the Academy's institutional culture, military training, living environment and sexual assault reporting processes.

The *Agenda for Change* is evidence that the Air Force, under Secretary Roche's leadership, is serious about taking long-overdue steps to correct the problems at the Academy, but in certain respects it does not go far enough to institutionalize permanent change. The most important of these shortcomings are:

- **Culture and Climate of the Academy.** The *Agenda for Change* recognizes that the sexual assault problems at the Academy are related to the culture of the institution, yet it does not go far enough to institute enduring changes in the culture and gender climate at the Academy.
- **Command Supervision.** The *Agenda for Change* does not address the need for permanent, consistent oversight by Air Force Headquarters leadership.
- **External Oversight.** The *Agenda for Change* does not address the need to improve the external oversight provided by the Academy's Board of Visitors.
- **Confidentiality Policy.** The *Agenda for Change* effectively eliminates the Academy's confidential reporting policy for sexual misconduct. In doing so, however, it removes critical options for sexual assault victims to receive confidential counseling and treatment, and may result in the unintended consequence of reducing sexual assault reporting.

The *Agenda for Change* provides several positive changes to the Academy's institutional culture, living environment, and education and training programs. These measures include establishing policies and procedures for: improving the selection and training of Air Officers Commanding to ensure highly-qualified role models and leadership for male and female cadets; promulgating new rules and procedures to maintain dormitory safety and security; setting clearer mandates for cadets to conduct themselves according to the spirit of the Honor Code; requiring academic courses in leadership and character development as part of the core academic curriculum; and improving Basic Cadet Training to reemphasize fair treatment and mutual respect.

The Panel understands that recently implemented policy changes represent significant progress, but concluded that they do not go far enough to institute enduring changes in the institutional culture and gender climate at the Academy.

As far as the Academy's response today to sexual assaults, the *Agenda for Change* established several progressive changes to ensure the Academy is proactive and meaningful when responding. The most noteworthy of these changes is the establishment of an Academy Response Team ("ART") which provides a victim of sexual assault immediate assistance and

ensures appropriate command actions. The Panel conducted an extensive review of the ART and is impressed that it presents a significant step toward achieving a consistent, appropriate response to reports of sexual assault, and to restoring trust and confidence in the Academy's handling of them. The Panel is confident that the ART has the necessary foundations to endure beyond the short-term implementation of the *Agenda for Change* and will be available to future generations of cadets.

The Panel is also encouraged that, while not required by the *Agenda for Change*, the Air Force Office of Special Investigations ("AFOSI") has taken the initiative to develop advanced training in sexual assault investigations which shall be provided to its Academy agents.

The Panel is concerned that the *Agenda for Change* essentially eliminates the Academy's confidential reporting policy for sexual misconduct, which removes critical options for sexual assault victims to receive confidential counseling and treatment. Additionally, the Panel believes the new policy overlooks an established form of privileged communication, the psychotherapist-patient privilege, and may have the unintended consequence of reducing sexual assault reporting.

The Panel also reviewed the *Agenda for Change* provision that essentially provides for blanket amnesty to victims of sexual assault. This could have the unintended consequence of creating the misperception that amnesty has been used as a sword, rather than as a shield, by some cadets to avoid accountability for their own misconduct.

In June 2003, after completing her investigation of sexual assault at the Academy, Air Force General Counsel Mary L. Walker released *The Report of the Working Group Concerning Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy* ("Working Group Report"). The *Working Group Report* covers many aspects of cadet life, Academy policies and sexual assault reporting procedures in place at the Academy during the last ten years. However, it avoids any reference to the responsibility of Air Force Headquarters for the failure of leadership which occurred at the Academy.

Any credible assessment of sexual misconduct problems over the last ten years must include an examination of the responsibility of both Academy and Air Force Headquarters leadership. The *Working Group Report* failed to do that even though the Air Force General Counsel had access to considerably more information, resources and time for study than did the Panel. The Panel believes that the Air Force General Counsel attempted to shield Air Force Headquarters from public criticism by focusing exclusively on events at the Academy.

## EXECUTIVE SUMMARY

The matters listed below are among those known to the members and staff of the Working Group, but not included or only obliquely referenced in its report:

- Since at least 1993, the highest levels of Air Force leadership have known of serious sexual misconduct problems at the Academy;
- Air Force Headquarters knew that over the objections of the AFOSI the Academy maintained unique confidential reporting procedures for sexual assaults deviating from the procedures of the Air Force. Air Force Headquarters failed to monitor how the procedures affected the ability to investigate and prosecute sexual assault offenders;
- In 1996, the Air Force Surgeon General notified the Air Force Chief of Staff of serious sexual misconduct at the Academy, but there is no evidence that the Air Force fully investigated the matter. The Office of the Air Force Surgeon General participated in the General Counsel's Working Group, but the *Working Group Report* omits any reference to this apparently unheeded warning;
- In 1996-1997, a team of lawyers at Air Force Headquarters recommended changes in the Academy's sexual assault reporting procedures. The Academy rejected the changes, and Air Force Headquarters deferred, but failed to monitor whether the procedures were working;
- In 2000-2001, after AFOSI again complained that the Academy's unique sexual assault reporting procedures interfered with its ability to investigate sexual assaults, Air Force Headquarters formed another team to review the procedures. After the Academy and AFOSI reached an agreement to resolve their competing concerns, Air Force Headquarters failed to monitor whether it was ever implemented;
- The 2000-2001 working group was chaired by the Air Force's Deputy General Counsel (National Security & Military Affairs). Three years later, that same attorney led the 2003 Working Group. Nevertheless, the *Working Group Report* makes only a brief reference to the earlier review and fails to disclose the lead attorney's substantial involvement; and

- In 2000, the Senate Armed Services Committee requested an investigation of allegations by the former Air Force Surgeon General that sexual misconduct at the Academy in 1996 had not been investigated or had been covered up. The Air Force Inspector General conducted a limited 30-day review, but did not investigate serious institutional problems after 1996. The *Working Group Report* does not mention the 2000-2001 review, even though the Air Force IG was a member of the Working Group.

The *Working Group Report* failed to chronicle these significant matters and events, undermining its own credibility and conclusion that there was “no systemic acceptance of sexual assault at the Academy [or] institutional avoidance of responsibility.” The Panel cannot agree with that conclusion given the substantial amount of information regarding the sexual assaults and the Academy’s institutional culture available to leaders at the Academy, Air Force Headquarters and the Office of the Air Force General Counsel.

The failure of the Academy and Air Force Headquarters leadership to respond aggressively and in a timely and committed way to eliminate causes of serious problems was a failure of leadership. Those responsible should be held accountable.

The Panel is well aware of the difficulty in holding accountable those who long ago left their positions of responsibility and now are beyond the reach of meaningful action by the Department of Defense. We do believe, however, that to make clear the exceptional level of leadership performance expected of future leaders in these positions and to put the failures of the recently removed Academy leadership in perspective, there must be some further accounting. To the extent possible, the failures of the Academy and Air Force Headquarters leaders over the past ten years should be made a matter of official record.

During the last decade, attention to the Academy’s sexual assault problems depended on the interest of the leadership in place and on other competing demands for time and resources. This shortcoming in consistent and effective command supervision co-existed with an absence of meaningful external oversight from entities such as the Academy’s Board of Visitors. This resulted in depriving the Academy of long-term solutions to the complex problem of sexual assault.

The Panel examined and reviewed the culture and environment at the Academy. It found an atmosphere that helped foster a breakdown in values which led to the pervasiveness of sexual assaults and is perhaps the most difficult element of the problem to solve.

## EXECUTIVE SUMMARY

The American people expect the highest integrity of officers serving in our Armed Forces. This expectation is a strong obligation at the Air Force Academy and was discarded by perpetrators of these crimes over the past decade. The Panel has found deficiencies in the Honor Code System and in the Academy's character development programs that helped contribute to this intolerable environment.

The Panel recognizes that the overwhelming majority of cadets are honorable and strive to live by the core values of integrity, service and excellence. Yet, these core values need to be more effectively interjected into real life situations for cadets.

Through its investigation and examination of this crisis, the Panel has determined the reasons this trusted institution failed many of its students. The Panel offers substantive recommendations to repair the Academy's foundation in hopes of restoring trust in its leadership and its mission. The situation demands institutional changes, including cultural changes. These changes are incremental and cannot be made overnight. Members of this Panel collectively agree it is in our nation's interest to ensure the vitality of this Academy for future generations.

## II. INTRODUCTION

On April 16, 2003, the President signed H.R. 1559<sup>1</sup> which, in Title V, §§ 501 - 503, established a Panel to review sexual misconduct allegations at the United States Air Force Academy. Section 502 of the statute requires the Panel to study the policies, management and organizational practices and cultural elements of the Academy that were conducive to allowing sexual misconduct, including sexual assaults and rape, at the Academy. (*See Appendix A.*)

The statute requires that the Panel be composed of seven members, serving without pay, appointed by the Secretary of Defense from among private U.S. citizens who have expertise in behavioral and psychological sciences and standards and practices relating to proper treatment of sexual assault victims, as well as the United States Military Academies.<sup>2</sup> The statute further requires that the Secretary, in consultation with the Chairmen of the Committees on Armed Services of the Senate and House of Representatives, select the Chairman of the Panel from among its members.<sup>3</sup>

In performing this study, the legislation directs the Panel to:

1. Review the actions taken by Academy personnel and other Air Force officials in response to allegations of sexual assault at the Academy;
2. Review the directives issued by the Air Force pertaining to sexual misconduct at the Academy;
3. Review the effectiveness of the process, procedures and policies used at the Academy to respond to allegations of sexual misconduct;
4. Review the relationship between the command climate for women at the Academy, including factors that may have produced a fear of retribution for reporting sexual misconduct, and the circumstances that resulted in the sexual misconduct;

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<sup>1</sup> H.R. 1559, 108th Cong. (2003) (subsequently enacted as part of the Emergency Wartime Appropriations Act of 2003, Pub. L. No. 108-11, 117 Stat. 559 (2003)).

<sup>2</sup> Pub. L. No. 108-11, § 501(b), 117 Stat. 559 (2003).

<sup>3</sup> *Id.* at § 501(c).

5. Review, evaluate and assess such other matters and materials as the Panel considers appropriate; and
6. Review and incorporate as appropriate the findings of the ongoing studies being conducted by the Air Force General Counsel and Inspector General.<sup>4</sup>

The duties of the Panel include carrying out the study outlined above and reporting not later than ninety days after its first meeting as to its findings, conclusions and any recommendations for legislative or administrative action that the Panel considers appropriate in light of the study.

The Panel did not investigate specific allegations of criminal assault in particular cases. That function is being carried out by the DoD IG and the Air Force IG. (A listing of acronyms used in this report is included as *Appendix B*.)

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*The Panel began its work and held its initial organizational meeting on June 23, 2003.*

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In May and June of 2003, following enactment of H.R. 1559, Secretary of Defense Donald H. Rumsfeld appointed seven private citizens to serve as members of the Panel. After consulting with the Chairmen of the Senate and House Armed Services Committees, Secretary Rumsfeld appointed former Congresswoman Tillie K. Fowler as the Panel's Chairman. (Biographies of the Panel Members and a list of Panel Staff are included as *Appendix C & Appendix D*, respectively.)

The Panel began its work and held its initial organizational meeting on June 23, 2003. That same day, the Panel also conducted its first public hearing in the House Armed Services Committee Hearing Room in Washington, D.C.

The Panel called several witnesses during the June 23, 2003 hearing. Senator Wayne Allard (R-CO) described the sexual assault problems at the Academy and outlined his interaction with former Academy cadets who claimed to have been victims of sexual assault.<sup>5</sup> Secretary of the Air Force James G. Roche explained the changes to Academy policies and procedures mandated by the *Agenda for Change*, which he and Air Force Chief of Staff General

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<sup>4</sup> Investigations by the Department of Defense Inspector General ("DoD IG") and the Air Force Inspector General ("Air Force IG") have not been completed as of the date of this report.

<sup>5</sup> Statement of Senator Wayne Allard (R-CO) to the Panel in Washington, D.C. (June 23, 2003).

## INTRODUCTION

John P. Jumper issued on March 26, 2003.<sup>6</sup> General Jumper was out of the country and could not attend the hearing. In his place, Assistant Vice Chief of Staff of the Air Force Lieutenant General Joseph H. Wehrle, Jr. responded to questions about the *Agenda for Change*. Mary L. Walker, General Counsel of the Air Force, attended the hearing and summarized the *Report of the Working Group Concerning Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy* ("Working Group Report").

Ms. Walker also answered questions about the *Working Group Report*, which had been made public a few days before the hearing.<sup>7</sup>

In July, the Panel traveled to Colorado Springs, Colorado to continue its fact-finding. On the morning of July 10, the Panel met in closed session with former

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*While in Colorado Springs, the Panel met with a total of ten former or current female cadets who said they had been sexually assaulted at the Academy.*

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cadets who stated they had been victims of sexual assault at the Academy. The Panel also heard from members of TESSA,<sup>8</sup> a rape crisis counseling center based in Colorado Springs, and from representatives of the Academy. That afternoon, the Panel visited the Academy and met with cadets from all four cadet classes. It also met with representatives of the Academy's former leadership, including Lieutenant General Bradley C. Hosmer, USAF (Ret.), and with the Academy's new leadership team comprised of Lieutenant General John W. Rosa, Superintendent; Brigadier General Johnny A. Weida, Commandant of Cadets; and Colonel Debra D. Gray, Vice Commandant of Cadets. While at the Academy, Chairman Fowler and Panel member Anita M. Carpenter met in private with three current female cadets who confided that they had been victims of sexual assault at the Academy, but had reported the crimes too late for authorities to take legal action. While in Colorado Springs, the Panel met with a total of ten former or current female cadets who said they had been sexually assaulted at the Academy. Although this represents only a small sampling of cadets, the information provided by the women was important to the Panel's understanding of sexual misconduct issues at the Academy.

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<sup>6</sup> Statement of James G. Roche, Secretary of the Air Force, to the Panel in Washington, D.C. (June 23, 2003).

<sup>7</sup> Statement of Mary L. Walker, Air Force General Counsel, to the Panel in Washington, D.C. (June 23, 2003).

<sup>8</sup> TESSA (Trust-Education-Safety-Support-Action) is an independent non-profit community services organization serving El Paso and Teller Counties, Colorado. TESSA provides a 24-hour domestic violence/sexual assault hotline, victim advocacy services, victim counseling and community education.

On July 11, 2003, the Panel held its second public hearing at City Hall in Colorado Springs, Colorado. During the hearing, the Panel had an opportunity to question the Academy's immediate past leadership, Lieutenant General John R. Dallager, former Superintendent of the Academy; Brigadier General S. Taco Gilbert III, former Commandant of Cadets; and Colonel Laurie S. Slavec, former 34<sup>th</sup> Training Wing Commander. (An organizational chart showing the leadership positions at the Academy prior to the *Agenda for Change* is included as *Appendix E*.) The Panel also received public statements at the hearing from the Academy's new leadership: General Rosa, General Weida and Colonel Gray. Lieutenant Colonel Alma Guzman, USAF (Ret.), the Academy's Victim Advocate Coordinator, Lieutenant Colonel Robert J. Jackson, head of the Academy's Behavioral Science Department, and Janet Kerr and Jennifer Bier of TESSA also testified at the July 11 hearing.

After completing its visit to the Academy, the Panel contacted additional people with knowledge of Academy policies and practices and reviewed documents obtained from a variety of sources. The Panel Staff also interviewed former cadets and Air Force and Academy officers. (For reference, a key to the names and positions of the individuals named in this report is included as *Appendix F*.)

On July 31, 2003, the Panel met in closed session and conducted fact finding at its office in Arlington, Virginia, with General John Jumper; Kelly F. Craven, Deputy Assistant Secretary of the Air Force for Force Management and Personnel; Joseph E. Schmitz, Department of Defense Inspector General; L. Jerry Hansen, Department of Defense Deputy Inspector General for Inspection and Policy; Lieutenant General Raymond P. Huot, Air Force Inspector General; and Brigadier General David H. Wagie, Dean of Faculty at the Academy.

In early August, Panel member Dr. Laura L. Miller and Panel Staff made a second fact-finding trip to the Academy where they attended segments of Basic Cadet Training, and met with cadets and representatives of selected Academy offices.

On August 19, 2003, the Panel met in executive session at its office in Arlington, Virginia.

On September 5, 2003, the Panel met in executive session and also held a public hearing in Arlington, Virginia to deliberate about the issues it deemed to be central to its report.

### III. AWARENESS AND ACCOUNTABILITY

*"There's been signals at this institution for years that we've had problems, and as an institution and as an Air Force, we haven't embraced them."*

Lieutenant General John W. Rosa, Superintendent, addressing parents at the Academy on Parents' Weekend, August 29, 2003<sup>9</sup>

*"[T]here's been a consistent 'drum beat' since 1993."*

Brigadier General Francis X. Taylor, USAF (Ret.), former Commander, Headquarters AFOSI, addressing the confidentiality program and AFOSI efforts to be informed of cases<sup>10</sup>

Since at least 1993, senior civilian and military leadership of the Air Force and the Air Force Academy were aware of serious and persistent problems of sexual assault and gender harassment at the Academy. According to the *Working Group Report*, during the ten-year period from January 1, 1993 to December 31, 2002, there were 142 allegations of sexual assault at the Academy, for an average of more than 14 allegations per year. (A chart showing the number of allegations of sexual assaults made by Academy cadets is included as *Appendix G*.) Little is known about the majority of these allegations, including whether or not they could have been substantiated. The Academy sought to address the problems with varying degrees of attention and success through a series of Air Force Secretaries, Chiefs of Staff, Academy Superintendents and Commandants of Cadets. (The individuals who held these positions from 1993–2003 are listed in *Appendix H*.)

Throughout the past ten years, there have been numerous incidents and indicators, investigations, working group discussions and high-level meetings on sexual assault and harassment issues at the Academy, which separately or collectively should have alerted Air Force leadership to the existence of a significant problem. The efforts to address the problems, while certainly well-intentioned, were *ad hoc* and competed for attention with myriad other critical issues facing the Department of the Air Force and the Academy. Frequent changes in

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<sup>9</sup> Pam Zubeck, *Sex Scandal Real, Rosa Says: Academy Superintendent Talks to Parents of Cadets*, COLO. SPRINGS GAZETTE, Aug. 30, 2003.

<sup>10</sup> Interview by Working Group with Brigadier General Francis X. Taylor, USAF (Ret.), in Washington, D.C. (July 16, 2003).

leadership inherent in military service resulted in short-term fixes for a long-term problem. As a result, a consistent, systemic approach to achieving enduring solutions eluded the Air Force.

The chronology of events that follows details the salient facts known to the Panel. Due to the Air Force's inability to produce historical records and documents required to trace and fully understand events, and because of the limited time mandated for this Panel's investigation, the chronology is incomplete. Nonetheless, the chronology of events assembled by the Panel reveals that there has been an awareness at the highest levels of Air Force leadership of a serious sexual assault problem at the Academy. (A graphic representation of the timeline of events is included as *Appendix J*.)

## A. Chronology of Events (1993–2003)

### 1993 (18 allegations of sexual assault)<sup>11</sup>

Prior to 1993, few sexual assaults were reported at the Academy.<sup>12</sup> This infrequency combined with the perceived high quality of entering cadets may have caused Academy leaders to believe the institution was virtually free of sexual assaults.<sup>13</sup> That perception ended following a sexual assault incident in February 1993. In response to that incident, Brigadier General Bradley C. Hosmer, then-Superintendent, reached out to the cadet population, and to female cadets specifically, to gain a better understanding of cadet experiences and perceptions about sexual assault and sexual harassment. General Hosmer's meeting with female cadets made it clear that the problem was significantly greater than he previously had suspected.<sup>14</sup>

General Hosmer attempted to improve the Academy environment by making changes to the Academy's sexual assault response program, including establishing an informal policy of confidential reporting.<sup>15</sup> General Hosmer commissioned the Academy's Center for Character Development ("CCD") to improve the overall character of the cadet population through educational and training programs. He also created a sexual assault hotline operated outside

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<sup>11</sup> *Working Group Report*, at 71.

<sup>12</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, Paper presented at the 105<sup>th</sup> Annual Convention of the American Psychological Association, Chicago, IL (Aug. 16, 1997), at 4.

<sup>13</sup> *Id*.

<sup>14</sup> *Working Group Report*, at 10-11.

<sup>15</sup> Prior to the changes made by Brigadier General Bradley C. Hosmer, USAF (Ret.), Cadet Wing policy required any staff member made aware of sexual assault to report the incident to the Air Force Office of Special Investigations ("AFOSI") and to their chain of command.

the chain of command that offered counseling to victims of sexual assault with the assurance of confidentiality. Another change was the institution of a victim amnesty program to encourage the reporting of sexual assaults. Under the amnesty policy, the chain of command could forego punishment of victim misconduct in order to encourage the reporting of sexual assault.<sup>16</sup>

General Hosmer made the changes to the Academy's sexual assault reporting policy on his own initiative. Although he did not consult with or formally coordinate his vision of a sexual assault reporting and confidentiality program with Air Force Headquarters, General Hosmer informed Panel Staff that he had frequent conversations about the policy with then-Air Force Secretary Sheila E. Widnall. He also said that he never received any indication from Air Force Headquarters, AFOSI or the Academy's Security Police that there were problems<sup>17</sup> or disagreements with his program."

### 1994 (14 allegations of sexual assault)"

In January 1994, the General Accounting Office (GAO) released a report on sexual harassment at each of the Service Academies which indicated that women were subject to harassment at all of the Service Academies at a level that portended a serious threat to the mission of the Academies to educate and train future military officers.<sup>18</sup> While the focus of the GAO report was sexual harassment and not sexual assault, it provided a significant indicator of the problems with the culture and climate at the Air Force Academy, particularly with regard to its treatment of women. However, the Working Group found no evidence that the Academy took any direct action in response to this GAO report.<sup>20</sup>

Another more direct indicator in 1994 of the extent of sexual assault problems at the Academy was the formation of a support group initially comprised of five cadet victims of sexual assault who did not have confidence in the Academy's formal reporting system.<sup>21</sup>

In July 1994, General Hosmer retired, and Lieutenant General Paul E. Stein became the Superintendent at the Academy.

<sup>16</sup> *Working Group Report*, at 10-11.

<sup>17</sup> Interview by Panel Staff with General Hosmer, USAF (Ret.), in Washington, D.C. (Aug. 18, 2003).

<sup>18</sup> *Working Group Report*, at 71.

<sup>19</sup> General Accounting Office (GAO) Report, DoD Service Academies: More Actions Needed to Eliminate Sexual Harassment (Jan. 1994).

<sup>20</sup> *Working Group Report*, at 14.

<sup>21</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond*, at 11.

### 1995 (17 allegations of sexual assault)<sup>22</sup>

In March 1995, the GAO issued a follow-on report to its 1994 investigation of sexual harassment, and concluded that the issue had not improved at any of the Academies.<sup>23</sup> The 1995 report also found that 78% of the Air Force Academy's female cadets responding to the GAO's survey indicated that they had been harassed on a reoccurring basis — a significant increase from a study conducted in 1990-91.<sup>24</sup>

Beginning in 1995, the Academy established a Social Climate Process Action Team ("PAT"), comprised of cadets, faculty and staff, to study sexual assault issues at the Academy. The PAT concluded that "most cadet sexual assaults are not reported," that "the institution is unaware of the extent of the problem and cannot plan how best to respond,"<sup>25</sup> and "that a major impediment to the reporting of assault was a lack of trust in the system."<sup>26</sup> The PAT proposed several guidelines for responding to sexual assault in the Academy's system. The guidelines were to: "1) respect the victim's privacy, dignity, confidentiality and desires; 2) provide strong and consistent support to the victims; 3) provide sensitive services; 4) adjudicate cases to the fullest extent possible; and 5) provide feedback to victims and the Cadet Wing to ensure the knowledge and understanding of changes in the system."<sup>27</sup> Several changes were implemented throughout the year, including establishment of the Sexual Assault Services Branch within the Cadet Counseling and Leadership Development Center<sup>28</sup> and establishment of the Sexual Assault Services Committee ("SASC") in November 1995.<sup>29</sup>

The Commandant chaired the SASC and met monthly with its 24 members.<sup>30</sup> The Committee's purpose was to integrate the various sexual assault services at the Academy, facilitate the exchange of information among its participants and permit discussion of sexual assault cases and issues.<sup>31</sup>

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<sup>22</sup> *Working Group Report*, at 71.

<sup>23</sup> GAO Report, *DoD Service Academies: Update on Extent of Sexual Harassment* (Mar. 1995).

<sup>24</sup> *Id.* at 8.

<sup>25</sup> Memorandum from Lieutenant Colonel Molly Hall, USAF, to Lieutenant General Paul E. Stein, USAF (Ret.), Superintendent, U.S. Air Force Academy ("USAFA") (June 10, 1996).

<sup>26</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond*, at 13.

<sup>27</sup> *Id.* at 14.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 16.

<sup>30</sup> *Id.*

<sup>31</sup> *Working Group Report*, at 14.

In 1995, General Stein took several actions to address the issues of sexual assault at the Academy, including pressing to fill the position of AFOSI Detachment Commander with a more senior and experienced officer and arranging for the assignment of a female Special Agent with specialized training in investigating sexual assault.<sup>32</sup>

After General Stein learned about the existence of the cadet sexual assault “underground” support group, he arranged to attend some of its meetings in order to learn more about the nature of the sexual assault situation at the Academy and the views of female sexual assault victims.<sup>33</sup> During the victim support group discussions, General Stein learned that some female cadets who were victims of sexual assault did not want to report the incidents to law enforcement. Instead, they chose to obtain support from other victims and not make a formal report that would involve the chain of command.<sup>34</sup> By listening to victims’ accounts of their experiences, General Stein learned that there were perpetrators of sexual assault in the cadet ranks who ultimately would be commissioned as officers.

### 1996 (15 allegations of sexual assault)<sup>35</sup>

By 1996, Air Force Headquarters recognized that the procedures to address sexual assault, initially put in place by General Hosmer, were not working as expected. The confidential reporting system instituted by General Hosmer depended for its success on counselors who encouraged victims to report crimes to AFOSI and the chain of command. It appears that over time, counselors did not perform this function and the investigation and prosecution of sexual assaults became secondary to victim treatment and counseling. The result was that the confidential reporting program provided counseling for sexual assault victims but also interfered with the timely investigation and prosecution of assaults.

The conflict between confidential reporting and the investigation and prosecution of perpetrators resurfaced in early 1996 when AFOSI did not learn of a sexual assault until days after the incident. On February 17, 1996, a male member of the Academy football team allegedly sexually assaulted a female cadet in her dorm room. By honoring the Academy policy of confidentiality, there was a delay in reporting the sexual assault.<sup>36</sup> On March 8, 1996,

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<sup>32</sup> *Id.* at 12.

<sup>33</sup> Interview by Panel Staff with Colonel Hall in Bethesda, Md. (Aug. 26, 2003).

<sup>34</sup> *Id.*

<sup>35</sup> *Working Group Report*, at 71.

<sup>36</sup> Memorandum from Air Force Public Affairs to the Secretary of the Air Force and the Air Force Chief of Staff (May 2, 1996).

Headquarters, AFOSI prepared an AFOSI ITEM report on the incident for the Air Force IG. According to the ITEM, the victim reported the assault to her Air Officer Commanding ("AOC") on February 20, but AFOSI did not learn of the assault until February 23. The AOC explained the victim did not want to "officially" report the incident and the AOC did not report it because of the Academy policy of confidentiality.<sup>37</sup>

In March 1996, upon learning of this incident, Brigadier General Robert A. Hoffman, then-Commander of AFOSI, sent his Staff Judge Advocate and a forensic expert to the Academy to review the way sexual assault cases were being addressed. The AFOSI's visit to the Academy identified several areas of concern regarding the reporting requirements, victim confidentiality, and the relationship between Academy officials and AFOSI.<sup>38</sup> The AFOSI summary noted the Academy program was unbalanced, reinforced a "system within a system," jeopardized the safety of other cadets and the ability to bring the offender to justice, and could result in the commissioning of an unsuitable officer.<sup>39</sup>

Lieutenant General Richard T. Swope, the Air Force IG, directed an Air Force Headquarters review of the Academy's policies and procedures for handling sexual assault cases. A multidisciplinary team of representatives from the Air Force Judge Advocate General's Office, Headquarters AFOSI, and the Air Force Surgeon General's Office, was established with plans to go to the Academy and provide assistance. However, General Stein advised that he preferred that the team remain in Washington, D.C. to conduct its review of the Academy's proposed operating instruction on Sexual Assault Victim Assistance and Notification Procedures. As General Stein requested, the team did not travel to the Academy. The review team received a draft of the Academy's proposed Operating Instruction for handling sexual assault issues. Among other matters, the team was to assist the Academy by adopting as much of the Academy's proposed draft as possible, while providing more balance to the program and better aligning it with the Air Force Victim/Witness Assistance Program.<sup>40</sup>

On April 22, 1996, the Chief of the Administrative Law Branch, General Law Division, Air Force Judge Advocate General's Office, provided a summary and assessment of the Academy's proposed Operating Instruction 36-10 on "Sexual Assault Victim Assistance and

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<sup>37</sup> However, the victim had been examined at the clinic and Cadet Counseling Center officials had taken photographs of the victim's bruises. See AFOSI ITEM, "C3C [Doe's] Alleged Sexual Assault of Female Cadet in Dorm."

<sup>38</sup> Summary of Headquarters AFOSI visit to USAFA.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

Notification Procedures.”<sup>41</sup> The memorandum concluded that the proposed Operating Instruction gave the victim a disproportionate amount of control over the situation and was at odds with the need for investigation and punishment of offenders. Additionally, the Operating Instruction allowed for delayed investigations that could result in “lost or contaminated evidence and that commanders and other officials are generally divested of authority to report crimes to law enforcement or OSI in complete abdication of their fundamental responsibility for discipline. While the Academy’s motive may be good, commanders and other responsible Air Force officials should never be permitted, expected, or encouraged to turn a blind eye to criminal activity, nor should they have to straddle a fence wondering which ‘crimes’ they should report and which they should keep secret.”<sup>42</sup>

The memorandum further stated that the proposed instruction was flawed in attempting to create a dual-track process — one totally confidential, the other allowing disclosure and investigation — in a single chain of people and opined that the “Air Force would take a good drubbing from parents, Congress, the press, you name it, if we pursue this particular policy.”<sup>43</sup> On June 26, 1996, General Swope forwarded to General Stein the Air Force Headquarters’ revision of the proposed instruction.

On December 12, 1996, General Stein sent General Swope a memorandum setting forth the Academy’s proposed Academy Instruction 51-201, “Cadet Victim/Witness Assistance and Notification Procedures.”<sup>44</sup> The draft instruction required all Academy personnel to report sexual assaults to the Cadet Counseling Center, which reported the assault and all information gathered, excluding names, to the Commandant of Cadets and the Security Police Office of Investigations (“SPOI”). The Commandant of Cadets could override the victim’s decision not to report the assault, depending on the Commandant’s inherent authority, but this was not expressly stated in the instruction. This omission was viewed as a problem in that cadet victims could be misled as to the parameters of the confidentiality program and, upon learning of a

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<sup>41</sup> Memorandum from Colonel Jarisse J. Sanborn, USAF, Chief, Administrative Law Branch, to Chief of the Military Justice Division (JASM), General Law Division (AF/JA) (Apr. 22, 1996).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* The Air Force Headquarters revision of the proposed 34 TRW *Operating Instruction 36-10* incorporated changes to accommodate the Academy’s objectives while providing a more balanced approach to the inherent conflict between victim confidentiality and reporting requirements. The revision attempted to strike the balance needed, requiring that the Commandant of Cadets be provided notice of all sexual assault cases with authority to override a victim’s desire not to pursue investigation of the assault when it is in the best interests of the Cadet Wing and/or the Air Force. Otherwise, confidentiality regarding the victim’s identity would be honored.

<sup>44</sup> Memorandum from General Stein, Superintendent, USAFA, to Lieutenant General Richard T. Swope, Air Force IG (SAF/IG) (Dec. 12, 1996).

Commandant's override decision, could lead them to distrust the command leadership.<sup>45</sup> General Stein also forwarded to General Swope the draft Academy Instruction that indicated his intent to request a waiver of regulations requiring medical personnel to report sexual assaults to AFOSI.

During this time that General Hoffman, Commander, AFOSI was asserting his concerns about the inadequacy of the Academy's sexual assault reporting policy, the Office of the Air Force Surgeon General became aware, and advised senior Air Force leadership, of even broader concerns regarding a climate at the Academy that appeared to foster animosity toward women and had the potential of contributing to the sexual assault problem.

In April 1996, the Air Force Surgeon General temporarily assigned Lieutenant Colonel Molly Hall, Chief of Psychiatry at Andrews Air Force Base and a psychiatric consultant to the Surgeon General, to the Academy Inspector General to conduct an inquiry into problems of cooperation and coordination between the Mental Health Unit and the Cadet Counseling Center. During her investigation, Colonel Hall uncovered information relating to sexual assault issues at the Academy.<sup>46</sup>

In May 1996, Colonel Hall briefed the Air Force Surgeon General, Lieutenant General Edgar R. Anderson, and the Deputy Surgeon General, Major General Charles H. Roadman, on the findings of her investigation, including information concerning sexual assault issues. Shortly after the briefing, General Anderson requested that Colonel Hall provide him with a written outline of the information.<sup>47</sup>

On June 3, 1996, General Anderson, General Roadman and Colonel Hall met with then-Chief of Staff of the Air Force, General Ronald R. Fogleman. At the meeting, Colonel Hall briefed General Fogleman regarding sexual assaults at the Academy, and asserted that "the problem of sexual assault and victimization continues at the Academy in large measure due to a cultural or institutional value system. This climate promotes silence, discourages victims from obtaining help, and increases the victim's fear of reprisal." <sup>48</sup> Colonel Hall also stated that the Academy lacked a coordinated policy linking the various support agencies into a safety net for

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<sup>45</sup> Interview by Panel Staff with Colonel Harlan G. Wilder, USAF (Ret.), Chief, General Law Division, Office of the Judge Advocate General, Headquarters USAF, in Arlington, Va. (Aug. 14, 2003); *see also* Memorandum from Colonel Wilder to General Swope, Air Force IG (Jan. 15, 1997).

<sup>46</sup> Interview by Panel Staff with Colonel Hall in Bethesda, Md. (Aug. 26, 2003).

<sup>47</sup> *Id.*

<sup>48</sup> Memorandum from Colonel Hall to General Stein, Superintendent, USAFA (June 10, 1996).

the traumatized victim, and expressed concern about the policy that allowed victims of assault to determine if they would identify the perpetrator or press charges.<sup>49</sup>

On June 4, 1996, General Anderson followed up on the meeting of the previous day and sent a note to General Fogleman reiterating his concerns. In the note, General Anderson stated that "there are CRIMES here – FELONIES . . . this patient [the Academy] needs major surgery, not just a band aid."<sup>50</sup>

General Fogleman told Panel Staff that he instructed Surgeon General Anderson to keep Colonel Hall actively involved in the issue. During an interview with Panel Staff, General Fogleman did not have a clear recollection of his response to the June 3, 1996 meeting. He said that he may have directed creation of an Integrated Process Team to conduct an in-depth study of the problem,<sup>51</sup> and possibly assigned the matter to Major General Susan L. Pamerlau, USAF (Ret.).<sup>52</sup> When contacted, General Pamerlau said that she did not recall any involvement in a study of sexual assault at the Academy.<sup>53</sup>

According to General Fogleman, Air Force leadership knew of the sexual assault problems at the Academy during his term in office, and both Air Force Headquarters and Academy leadership were engaged in a variety of actions to address the issue.<sup>54</sup> General Fogleman believes the sexual assault issue was a topic of several discussions with General Stein, and that General Stein was fully engaged on the issue and had initiated a variety of actions to address the problem. General Fogleman does not recall any specific conversations with then-Air Force Secretary Sheila E. Widnall, but believes she knew of the sexual assault issue at the Academy.<sup>55</sup>

Secretary Widnall was visibly involved in issues regarding women in the military, including serving as co-chair of the DoD Task Force on Discrimination and Sexual Harassment in the Military,<sup>56</sup> so it stands to reason that she may have been aware of issues concerning sexual assault at the Academy. By the same token, other Secretaries and Chiefs of Staff, before

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<sup>49</sup> *Id.*

<sup>50</sup> Note from Lieutenant General Edgar R. Anderson, USAF, Air Force Surgeon General (AF/SG), to General Ronald R. Fogleman, USAF, Air Force Chief of Staff (Sept. 2, 2003).

<sup>51</sup> Telephone interview by Panel Staff with General Fogleman, USAF (Ret.) (Aug. 4, 2003).

<sup>52</sup> *Id.*

<sup>53</sup> E-mail from Senior Executive Assistant, SAF/AA, to Panel Staff (Sept. 4, 2003).

<sup>54</sup> Telephone interview by Panel Staff with General Fogleman (Aug. 4, 2003).

<sup>55</sup> *Id.*

<sup>56</sup> See, Statement by the Secretary of the Air Force Sheila E. Widnall to the Senate Armed Services Committee (Feb. 4, 1997).

and after General Fogleman, may also have had involvement in formulating responses to sexual assault issues at the Academy. The Panel's limited time for review prevented it from fully exploring the knowledge of the former Air Force leadership.

After the meeting with General Fogleman in June 1996, Colonel Hall returned to the Academy to conduct a review of the sexual assault issues that had surfaced in the earlier inquiry. Upon completion, she prepared a memo dated June 8, 1996 for the Superintendent detailing her meeting with General Fogleman and noting the leadership at the Academy was "aware, actively concerned, and engaging the problem."<sup>57</sup> She cautioned that "the institution is still unaware of the extent of the problem."<sup>58</sup> Colonel Hall sent substantially similar memoranda to Generals Fogleman, Anderson and Roadman.

General Anderson retired from the Air Force effective December 31, 1996; General Roadman succeeded him as Air Force Surgeon General. At the time he retired, General Anderson was unaware of any action taken by the Air Force to investigate the sexual assault problems detailed in Colonel Hall's report.<sup>59</sup>

In late 1996, the Academy realigned the Cadet Counseling Center and placed it under the Dean of Faculty to separate the counseling services from the disciplinary process.<sup>60</sup> Also in 1996, the Academy's Social Climate Surveys for the first time included questions on sexual assault.

### 1997 (7 allegations of sexual assault)<sup>61</sup>

In February 1997, the Academy asked Air Force Headquarters for an approval of a waiver from the Air Force Instruction requiring Academy medical personnel to report sexual assault incidents to command and AFOSI. The Academy believed the waiver would encourage the reporting of sexual assaults by respecting victim privacy, confidentiality and desires.<sup>62</sup> The Air Force Surgeon General, Inspector General, and Judge Advocate General (Lieutenant Generals Roadman and Swope, and Major General Bryan Hawley, respectively) traveled to the

<sup>57</sup> Memorandum from Colonel Hall to General Stein (June 10, 1996).

<sup>58</sup> *Id.*

<sup>59</sup> Interview by Panel Staff with General Anderson, USAF (Ret.), in Arlington, Va. (Sept. 2, 2003).

<sup>60</sup> *Working Group Report*, at 13.

<sup>61</sup> *Id.* at 71.

<sup>62</sup> Slides presented by General Stein to General Swope, SAF/IG, Lieutenant General Charles H. Roadman, II, AF/SG, and Major General Bryan G. Hawley, AF/JA (Feb. 14, 1997). Interview by Panel Staff with Colonel Hall in Bethesda, Md. (Aug. 26, 2003).

Academy and, in a meeting chaired by General Stein, received a briefing on the proposal from the Chief of the Cadet Counseling Center. Colonel Hall also attended the meeting.

The Academy briefing was intended to persuade the attendees of the necessity for the waiver of reporting requirements. The briefing included statistical information that indicated the informal policy of confidentiality had resulted in more victims coming forward to report sexual assaults to the Cadet Counseling Center.<sup>63</sup> The briefing also noted, however, that the scope of the problem was still in question, and that other indicator "flags" suggested that the problem might be larger than previously thought to be the case.<sup>64</sup> The presentation slides specifically noted, for example, that it is known that nationally as few as one in ten rapes is reported to the authorities.<sup>65</sup>

During that visit, the Generals and Colonel Hall met with approximately 20 representatives of the "underground" group of victims. In an interview with Panel staff, General Roadman described the scene as "surreal," with curtains drawn across the windows while these victims expressed their concerns about the need for confidentiality in reporting incidents of sexual assault so that they could receive counseling and medical treatment.<sup>66</sup> It was at the conclusion of this meeting that Colonel Hall was persuaded of the value of some form of limited confidentiality for cadet assault victims.<sup>67</sup>

On May 22, 1997, General Roadman granted the Academy's request to waive the reporting requirement to AFOSI for a one-year temporary period, but with the stipulation that medical personnel concurrently report all cases of suspected rape or sexual assault against cadet victims to the Cadet Counseling Center and Commandant of Cadets. The Cadet Counseling Center was to report to the Security Police Office of Investigations. On July 15, 1997, following issuance of the waiver, the Academy issued Academy Instruction 51-201, "Cadet Victim/Witness Assistance and Notification Procedures."

According to General Roadman, he granted the waiver because psychiatric services at the Academy had become dysfunctional and cadets had lost confidence in the mental health department's ability. General Roadman was convinced that cadet victims would not come forward for treatment without assurances that their situation would not become common

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Interview by Panel Staff with General Roadman, USAF (Ret.), in Washington, D.C. (Sept. 4, 2003).

<sup>67</sup> Interview by Panel Staff with Colonel Hall in Bethesda, Md. (Aug. 26, 2003).

knowledge at the Academy and that they would otherwise not be re-victimized by the reporting process. General Roadman believed the Academy's mental health services system needed time to rebuild trust with the cadets.<sup>68</sup>

According to General Roadman, at the end of the one-year waiver, the Academy was obligated either to seek an extension or begin compliance with the Air Force Instruction on reporting instances of sexual assault.<sup>69</sup> Neither General Roadman nor Colonel Hall were again presented with the issue of sexual assault at the Academy.<sup>70</sup> The Academy never renewed the one-year waiver, but continued to act as if it were still in existence until the *Agenda for Change* required reporting of all incidents of sexual assault to command authorities.

In August 1997, Lieutenant General Tad J. Oelstrom became Superintendent of the Academy.

### 1998 (16 allegations of sexual assault)<sup>71</sup>

By 1998, the Academy leadership had every reason to believe sexual misconduct was an issue worthy of attention. In December of 1998, the Chief of Sexual Assault Services provided a briefing entitled "We Have A Problem" to the Academy's "Top Six" (the Superintendent or his executive, the Dean of Faculty, the Commandant, the Vice Commandant, the Training Group Commander and the Athletic Director).<sup>72</sup> The presentation referred to "Cadet Statistics on Sexual Assault," including results of the 1997 Social Climate Survey showing an estimated 24%<sup>73</sup> of female cadets sexually assaulted since coming to the Academy. It is not evident what the leadership did in response to learning that a sizable portion of the female cadet population reported being sexually assaulted after arriving at the Academy.

Social Climate Surveys were one of the few tools Academy leadership had to gauge the extent of the sexual assault problem at the Academy. Given the prior indicators and the pointed attention drawn to the results of the 1997 survey, it is remarkable that Academy leadership, and

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<sup>68</sup> Interview by Panel Staff with General Roadman, USAF (Ret.), in Washington, D.C. (Sept. 4, 2003).

<sup>69</sup> *Id.*

<sup>70</sup> Interview by Panel Staff with Colonel Hall in Bethesda, Md. (Aug. 26, 2003); Interview by Panel Staff with General Roadman in Washington, D.C. (Sept. 4, 2003).

<sup>71</sup> *Working Group Report*, at 71.

<sup>72</sup> *Id.* at 17-18.

<sup>73</sup> According to the *Working Group Report*, the slide contained a mathematical error and should have said "15%" of female cadets had been sexually assaulted since coming to the Academy. *Id.* at 18.

the officers responsible for keeping them informed, did not take greater interest in the Social Climate Surveys which repeatedly warned of serious problems for the institution.

When asked in early 2003 for prior climate surveys, the Air Force did not provide information for years prior to 1998.<sup>74</sup> It did produce survey information for 1998, and 2000–2003. The Academy did not conduct a Social Climate Survey in 1999. The Academy considers the 1998, 2000, 2001 and 2002 surveys to be “statistically invalid,” yet Academy officials have not provided an acceptable explanation of why they repeatedly administered invalid surveys with no apparent efforts to develop a valid survey tool.

Even if the surveys truly were not “statistically valid,” they offered startling information about the Academy’s gender climate. For example, the 2001 survey showed that of reporting female cadets, 47% said they had been sexually harassed by other cadets, 63% reported derogatory comments and 66% felt they had been discriminated against by other cadets on the basis of gender.<sup>75</sup> It appears that the Academy leadership ignored this information. This lack of attention and appropriate concern is all the more troubling in light of the Working Group’s confirmation of the survey findings during its interviews of cadets, professors and Academy leadership.<sup>76</sup> Academy and Air Force leadership failed to recognize their significance and take appropriate action.

### 1999 (10 allegations of sexual assault)<sup>77</sup>

In late 1999, Headquarters AFOSI again raised concerns with the Academy’s unique sexual assault reporting policy.<sup>78</sup> These concerns were sparked by the delayed reports of sexual assault received from two female cadets.<sup>79</sup> Brigadier General Francis X. Taylor, the AFOSI Commander, contacted the Air Force IG, Lieutenant General Nicholas B. Kehoe, and the Air Force General Counsel, Jeh Johnson. Mr. Johnson suggested to General Taylor that the issue be coordinated with several headquarters staff elements.<sup>80</sup> As a result, Air Force Deputy General

<sup>74</sup> Letter from Major General Leroy Barnidge, Jr., USAF (Ret.), to Senator Allard (Mar. 28, 2003).

<sup>75</sup> *Working Group Report*, at 84.

<sup>76</sup> *Id.* at 85.

<sup>77</sup> *Id.* at 71.

<sup>78</sup> *Id.* at 17.

<sup>79</sup> One female cadet who had been sexually assaulted was speaking with another female cadet who also happened to have been sexually assaulted, and when the two determined that they were assaulted by the same assailant they decided to come forward and report. Interview by Working Group with General Taylor in Washington, D.C. (July 16, 2003).

<sup>80</sup> E-mail from General Taylor to Lieutenant Colonel Eric Weiss (Nov. 30, 1999).

Counsel (National Security & Military Affairs), William K. At Lee, was given the lead for staff coordination.

### 2000 (10 allegations of sexual assault)<sup>81</sup>

In January 2000, Mr. At Lee advised the Director of the General Law Division that he wanted to assemble a group of people from their respective offices and AFOSI to “discuss the procedures in place for responding to allegations of sexual assault against cadets; whether they remain appropriate after the passage of time since their institution; and whether they now create unacceptable risk for the Academy leadership.”<sup>82</sup> In March 2000, this Sexual Assault Policy Working Group met to discuss the Academy’s procedures.

The Sexual Assault Policy Working Group continued its review periodically over the next 18 months and debated the merits of the Academy’s policy. For example, in his memorandum of July 13, 2000, the Academy Staff Judge Advocate asserted that the Academy’s confidentiality program “has been a success.”<sup>83</sup> However, Headquarters AFOSI Staff Judge Advocate objected to the program and, in a memorandum dated July 14, 2000, strongly disagreed with the policy and proposed alternatives for implementation.<sup>84</sup> In addition to considering the merits of the Academy’s confidentiality policy, the Sexual Assault Policy Working Group collected information about the number of sexual assaults since 1985, and analyzed such sources as Social Climate Surveys and “reprisal climate behavior data.”<sup>85</sup> Apparently, the Sexual Assault Policy Working Group never produced a formal report.

In May 2000, the Academy received another indicator of concerns about its climate and culture. The Character Development Review Panel, chaired by retired General Hosmer, presented a final report to the Academy that included an independent assessment of the status of the character development program at the Academy.<sup>86</sup> One of the report’s findings was that the Academy’s character development program was handicapped by the absence of any methodologies for assessing results.<sup>87</sup> The report suggested that the Academy consider several indicators to assess the strength of character of the Cadet Wing, to include indicators of loyalty

<sup>81</sup> *Working Group Report*, at 71.

<sup>82</sup> E-mail from William K. At Lee, Air Force Deputy General Counsel (National Security & Military Affairs), to Colonel Wilder (Jan. 10, 2000).

<sup>83</sup> Memorandum from Colonel Charles R. Lucy, USAF, to USAFA (July 13, 2000).

<sup>84</sup> Memorandum from Colonel Weiss to AFA Sexual Assault Policy Working Group (July 14, 2000).

<sup>85</sup> Documents produced by William At Lee pursuant to Panel request.

<sup>86</sup> USAFA: *Character Development Review Panel Initial Meeting Final Report* (May 27, 2000).

<sup>87</sup> *Id.* at 7

to individuals over loyalty to unit, acts of reprisal, and poll data reflecting fear of reprisal and sexual misconduct, especially involving abuse of authority.<sup>88</sup>

In June 2000, General John R. Dallager became Superintendent of the Academy.<sup>89</sup>

In August 2000, at the request of the Senate Armed Services Committee, the Air Force IG initiated an investigation into allegations made by former Air Force Surgeon General, Lieutenant General Edgar R. Anderson, that complaints of sexual assault at the Academy had not been investigated or had been deliberately covered up during Major General John D. Hopper Jr.'s tenure as Commandant of Cadets.<sup>90</sup> The information General Anderson provided to the Committee included the detailed outline of sexual assault issues that Colonel Hall prepared in 1996.

The Air Force IG's investigation focused on whether General Hopper abused his authority by actively concealing or discouraging proper investigations of incidents of cadet sexual misconduct. The IG's review cleared General Hopper of any wrongdoing. There is no indication that the IG addressed the broader issues of sexual assault and the gender climate at the Academy. The information provided to the Air Force IG by the Senate Armed Services Committee gave the Air Force leadership another chance to address potential problems at the Academy. Apparently, the Air Force leadership did not take advantage of the opportunity.

Lieutenant General Raymond P. Huot, the current Air Force IG, was also IG at the time that the General Hopper investigation was completed. General Huot approved the Complaint Analysis for the General Hopper investigation.<sup>91</sup> More recently, General Huot was a member of the 2003 General Counsel's Working Group, yet there is no discussion in the *Working Group Report* of the investigation of General Hopper or the underlying allegations of sexual misconduct at the Academy.

In November 2000, General Taylor, then-Commander of Headquarters AFOSI, met with General Dallager to discuss the Academy's Victim Witness Assistance Program and AFOSI's role in investigating cadet sexual assault cases at the Academy. General Taylor reportedly raised several proposals to get AFOSI more involved in sexual assault investigations. General Taylor later informed Mr. At Lee, "I am not ready to declare victory as we still are not

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<sup>88</sup> *Id.*

<sup>89</sup> *Working Group Report*, at 19.

<sup>90</sup> Memorandum for Air Force IG, Subject: Senior Official Complaint Analysis – Maj. Gen. John D. Hopper, Jr. COMPLAINT ANALYSIS (Aug. 28, 2000).

<sup>91</sup> *Id.*

made aware of ALL complaints, but I found the Superintendent receptive to our concerns and looking for a methodology to get us involved while assuring the anonymity of the victim is protected . . . I think we made good progress, but only time will tell."<sup>92</sup>

### 2001 (17 allegations of sexual assault)<sup>93</sup>

On May 4, 2001, General Taylor sent an e-mail to Brigadier General Mark A. Welsh III, then-Commandant of Cadets, following a meeting between the two at the Academy regarding the Academy's sexual assault policy. General Taylor expressed appreciation for the improvements in the process and stated that it appeared that many of the concerns with the program since its inception had been overcome.<sup>94</sup> General Taylor asked that his successor follow up on this issue by scheduling a visit with General Welsh for an in-depth briefing on the current program and its benefits. According to AFOSI witnesses, AFOSI did not follow up on the issue because the matter appeared resolved at the Headquarters AFOSI level.<sup>95</sup> Also, within four months of the May meeting the events of September 11 significantly altered AFOSI's mission and the focus of its efforts and resources.

According to General Welsh, until the recent 2003 media reports, he was unaware of the existence of the headquarters-level Sexual Assault Policy Working Group and its 18-month effort to resolve issues involving the reporting of sexual assault incidents at the Academy.<sup>96</sup> However, in late 1999 or early 2000, General Welsh became concerned that the Academy leadership was not receiving information about sexual assaults reported to the Cadet Counseling Center and, as a result, Academy leadership was not involved in responding to these reports. General Welsh believed that while the Cadet Counseling Center appeared to be responding well to the victims' medical and emotional needs, senior Academy leadership was not receiving information to allow it to decide whether the incidents should be reported to AFOSI for investigation. Accordingly, General Welsh initiated an effort to develop a process and a two-page form for tracking the reports and for the Cadet Counseling Center to

<sup>92</sup> E-mail from General Taylor to William K. At Lee (Nov. 19, 2000).

<sup>93</sup> *Working Group Report*, at 71.

<sup>94</sup> E-mail from General Taylor to General Mark A. Welsh III, USAF, Commandant, USAFA (May 4, 2001).

<sup>95</sup> Interview by Panel Staff with Brigadier General Leonard E. Patterson, USAF, Commander, Headquarters, AFOSI, at Andrews Air Force Base, Md. (July 28, 2003); Interview by Panel Staff with Colonel Stephen D. Shirley, USAF, Vice-Commander, Headquarters, AFOSI, at Andrews Air Force Base, Md. (Aug. 5, 2003); Interview by Panel Staff with Special Agent Gary Triplett (July 28, 2003); Telephone interview by Panel Staff with Special Agent Michael Speedling in Washington, D.C. (July 28, 2003); Interview by Panel Staff with Special Agent Kelly Mayo (Aug. 22 & 23, 2003).

<sup>96</sup> Interview by Panel Staff with General Welsh in Arlington, Va. (Aug. 28, 2003).

disseminate basic information about reports of sexual assaults to himself, the Vice Commandant of Cadets, the 34<sup>th</sup> Training Wing Commander, AFOSI and the Security Police.<sup>97</sup>

General Welsh and General Taylor agreed on the tracking process. General Taylor believed it addressed AFOSI's concerns about receiving information concerning sexual assault incidents. The Academy was to formalize the tracking process and form by making them part of the Academy's Instruction for reporting sexual assaults. However, sometime after the May 2001 meeting between General Taylor and General Welsh, the two-page tracking form that had been in use by the Cadet Counseling Center was changed to a single page that contained no information as to the basic details of an incident. According to Victim Advocate Alma Guzman, she thought that the form was changed as the result of a victim's complaint and that it contained too many details.<sup>98</sup> The tracking process and two-page form was developed at General Welsh's direction to improve the information that the Command and AFOSI received concerning sexual assaults.

General Welsh left his position as Commandant of Cadets in late July or early August 2001, and does not recall what information on this subject he passed on to his successor.<sup>99</sup>

In August 2001, General S. Taco Gilbert III became Commandant of Cadets. Before he began his assignment, General Gilbert met with the Air Force Chief of Staff, General Michael E. Ryan, and received "marching orders" to fix the discipline and standards at the Academy.<sup>100</sup> In response, General Gilbert took a number of actions to instill accountability, enforce existing standards regarding wear and appearance of uniforms and improve the physical condition of the cadet area.<sup>101</sup>

According to General Gilbert, upon his arrival at the Academy, senior Academy members told him that the Academy previously had problems with sexual assaults and had implemented the Cadets Advocating Sexual Integrity and Education ("CASIE") program in response. General Gilbert said he was told that CASIE was considered a model sexual assault response program by other schools and Service Academies. General Gilbert recognized that the

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<sup>97</sup> *Id.*

<sup>98</sup> Lieutenant Colonel Alma Guzman, USAF (Ret.), Tracking Form Documents and a note received on September 11, 2003.

<sup>99</sup> Interview by Panel Staff with General Welsh in Arlington, Va. (Aug. 28, 2003).

<sup>100</sup> Interview by Working Group with Brigadier General S. Taco Gilbert, III, Commandant, USAFA, in Colorado Springs, Colo. (Mar. 21, 2003).

<sup>101</sup> *Id.* at 20-21.

CASIE program differed substantially from the procedures used throughout the operational Air Force for reporting incidents of sexual assault.<sup>102</sup>

In August 2001, the Air Force Academy Honor Climate Assessment Task Force completed an assessment of the Academy's Honor Code, the Honor System, and the conditions surrounding the Honor System.<sup>103</sup> The Task Force report was provided to Chief of Staff General Ryan. Although the report did not address issues of sexual assault, it provided yet another indicator of potential problems in the culture at the Academy. The report noted confidence in the Honor System had declined and stated that "the honor environment and culture must be under constant scrutiny and frequent review by Academy leadership of its discharge of USAFA's character-building mission."<sup>104</sup>

### 2002 (18 allegations of sexual assault)<sup>105</sup>

General Gilbert told the Working Group that by fall 2000 he had concluded that the Academy's unique program for responding to sexual assaults was broken. General Gilbert stated that he based his conclusion, at least in part, on the fact he was not receiving information about sexual assaults reported to the Cadet Counseling Center. In his view, the Academy had built a reporting system predicated on the assumption that the chain of command could not be trusted.<sup>106</sup> General Gilbert said he had limited personal experience with sexual assault cases during his tenure at the Academy because the "system was specifically designed to not provide information to the Commandant."<sup>107</sup> General Gilbert felt that the system largely isolated him from information concerning sexual assaults. Further, he found the data he did receive was

<sup>102</sup> Statement of General Gilbert to the Panel in Colorado Springs, Colo. (July 10, 2003).

<sup>103</sup> According to the 2001 (*Report to the Chief of Staff, United States Air Force, by the Air Force Academy Honor Climate Assessment Task Force, on the Honor Code and System*) ("Carns Report") (Aug. 2001), 60% of cadets reject the Honor System's presumptive sanction of disenrollment. Cadets believe punishments should better fit the crime, the system of punishments is too excessive, there should be a "difference in punishments made for offenses by different classes," and that honor offenses occur on a graduated scale of severity. Almost 70% of cadets would tolerate or possibly tolerate honor violations "depending on the severity of the violation" and 78% would continue to tolerate violations as long as the presumptive sanction of disenrollment is in place.

<sup>104</sup> *Id.* at 1.

<sup>105</sup> *Working Group Report*, at 71.

<sup>106</sup> Interview by the Working Group with General Gilbert in Colorado Springs, Colo. (Mar. 21, 2003).

<sup>107</sup> *Id.* General Gilbert stated that he had knowledge of eight assaults that occurred while he was Commandant and that he reported all of them to AFOSI.

limited, portrayed as being unreliable by the people providing it and, in individual cases, devoid of useful information.<sup>108</sup>

General Gilbert's experience and actions in receiving information on specific reports of sexual assaults differed from that of his immediate predecessor, General Welsh. While both encountered problems obtaining information on sexual assaults, General Welsh initiated dialogue with the CASIE Program, the Cadet Counseling Center and its Victim Advocate.<sup>109</sup> These actions resulted in the development of a sexual assault information tracking form that provided General Welsh basic information that he thought that he needed concerning sexual assaults. The form served as the basis for determining the need for follow-up calls to the Victim Advocate or others to receive more complete information about an incident so that he could make decisions that were consistent with his command responsibility. If the tracking form had been formally implemented, it may have resolved AFOSI's long-term concern about not receiving such information.

The Academy's sexual assault response program also delineated specific responsibilities for General Gilbert. The governing instruction for reporting sexual assaults states that the Commandant of Cadets is the Chair of the SASC. Among its responsibilities, the SASC served as the central resource for tracking and monitoring reported cases of sexual assault.<sup>110</sup>

Academy Instruction 51-201 expressly recognizes the Commandant's responsibilities for the safety of the Cadet Wing and requires that he will receive information in his positions both as Commander of the Cadet Wing, and as Chair of the SASC. The instruction requires that the Cadet Counseling Center immediately inform the Commandant of reported sexual assaults because the Commandant is the commander responsible for both cadet victims and cadet perpetrators. The instruction requires the Commandant to advise the Superintendent concerning the merits and limitations of authorizing an investigation.<sup>111</sup>

As Chair of the SASC, the Commandant had ample authority and means for receiving information about specific sexual assaults, and the scope of the overall problem at the Academy. Further, as the Chair, he was the senior officer responsible for overseeing the Academy's sexual assault response program and ensuring its effectiveness.

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<sup>108</sup> Statement of General Gilbert to the Panel in Colorado Springs, Colo. (July 10, 2003).

<sup>109</sup> *Working Group Report*, at 140; Interview by Panel Staff with General Welsh in Arlington, Va. (Aug. 28, 2003).

<sup>110</sup> USAFA Instruction 51-201 (Apr. 18, 2000).

<sup>111</sup> *Id.*

In his statement to the Working Group, General Gilbert indicated a general understanding of the procedures a victim would follow to report a sexual assault incident. Yet General Gilbert believed, based on the practice in effect at the Academy, that the Vice Commandant was the official Chair of the SASC.<sup>112</sup> He did not know that Academy Instruction 51-201 made the Commandant of Cadets the Chair of the SASC, and had either little knowledge or incorrect information as to its authority, responsibility and operating procedures. General Gilbert was told and apparently believed that the Academy's sexual assault response program was designed to keep the Commandant out of the loop to receive information.<sup>113</sup> Although the Panel does not question that General Gilbert held these beliefs, he did little to examine their legitimacy or pursue the information he required as Commandant.

In the fall of 2002, General Gilbert proposed several solutions to the Superintendent concerning sexual assault response programs that were not implemented during his tenure, but which are incorporated in the *Agenda for Change*. Among these was his preference that the Department of Behavioral Sciences and Leadership, which included the Cadet Counseling Center, be moved under the Training Wing to allow the Commandant to receive information that he needed to make decisions. At the suggestion of General Dallager, General Gilbert spoke to Brigadier General David Wagie, Dean of Faculty, under whose control the Cadet Counseling Center operated. General Wagie disagreed with the proposal and the proposed change was not made.<sup>114</sup>

According to the *Working Group Report*, attention to the SASC waned in 2001, during which the Committee switched to a quarterly meeting schedule.<sup>115</sup> Apparently, the SASC only met three times in 2001 and twice in 2002. During General Dallager's 33-month tenure as Superintendent, there were four Vice Commandants, serving as the Committee's Chairman and three Chiefs of Sexual Assault Services. As a result of these changes, there was little coordination of the Academy's sexual assault response program during the years immediately before the current controversy came to public attention.

During his interview with the Working Group, General Gilbert discussed the Social Climate Surveys and Sexual Assault Surveys administered by the Academy to the Cadet Wing between 1998 and 2003. General Gilbert told the interviewer that he was unaware of the 2001 Sexual Assault Survey in which 167 cadets reported they had been sexually assaulted since

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<sup>112</sup> *Working Group Report*, at 141.

<sup>113</sup> *Id.*

<sup>114</sup> Interview by the Working Group with General Gilbert in Colorado Springs, Colo. (Mar. 21, 2003).

<sup>115</sup> *Working Group Report*, at 21.

coming to the Academy. General Gilbert also denied knowing about the 2002 Sexual Assault Survey in which 80 cadets indicated that they had been assaulted after arriving at the Academy.<sup>118</sup>

In May 2002, Colonel Laurie S. Slavec assumed command of the 34<sup>th</sup> Training Group. In that position, Colonel Slavec was responsible for the day-to-day training, management and support of the Cadet Wing and staff.<sup>119</sup> Several cadet victims reported to the Working Group and the Panel that, during Colonel Slavec's tenure, they were afraid to report instances of sexual assault. The cadets expressed concern that they and other cadet witnesses would be punished for disciplinary infractions, such as underage drinking or fraternization, arising in connection with the assault or which might be revealed through investigation of the assault.

The Panel questioned Colonel Slavec about whether she had taken disciplinary action against female cadets who alleged sexual assault and Colonel Slavec responded that, "there were never any victims who served punishments that claimed sexual assault."<sup>120</sup> Academy officials later clarified this statement and indicated that, although actual punishment had not been imposed, certain sexual assault victims received notice that they were under investigation for disciplinary violations. In some of the cases, the victims were placed on restriction while the matter was under review. It is not difficult to understand how a cadet could perceive the loss of liberty as punishment, nor is it difficult to understand how this practice could discourage cadets from reporting that they were victims of sexual assault.

According to General Gilbert, in September 2002 he began to hear concerns about Colonel Slavec's ability to get along and communicate with other senior leaders at the Academy.<sup>121</sup> General Gilbert had several conversations with Colonel Slavec about her "bedside manner" and ability to work through issues.<sup>122</sup> Colonel Slavec's manner did not improve and by February 2003, General Gilbert began working to replace her.<sup>123</sup>

As of 2002, the officer with the greatest experience and responsibility for the sexual assault response program was General Wagie.<sup>124</sup> The Dean of Faculty was directly responsible for the Cadet Counseling Center and the CASIE program, for conducting surveys and

<sup>118</sup> Interview by the Working Group with General Gilbert in Colorado Springs, Colo. (Mar. 21, 2003).

<sup>119</sup> Air Force Academy Press Release #125 (May 22, 2002).

<sup>120</sup> Statement of Colonel Laurie S. Slavec, USAF, to the Panel in Colorado Springs, Colo. (July 11, 2003).

<sup>121</sup> Interview by the Working Group with General Gilbert in Colorado Springs, Colo. (Mar. 21, 2003).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Working Group Report*, at 153.

compiling data and for the Center for Character Development. Additionally, General Wagie had been assigned to the Academy in various positions since 1987 and chaired the Social Climate Process Action Team.<sup>123</sup> General Wagie was the key member of the Academy's senior leadership who was aware of the sexual assault survey data and the number of cases reported to the Cadet Counseling Center. He had a unique perspective to appreciate the significance of the data, but failed to take the action expected of someone in his leadership position.

Throughout 2002, Senator Wayne Allard (R-CO) brought several issues of sexual misconduct to the attention of Academy leadership.<sup>124</sup> In May 2002, an attorney representing the family of a 13-year-old girl who was sexually assaulted by a first-class cadet contacted Senator Allard. The girl's family was displeased with the Academy's handling of the case. In response to this allegation, Senator Allard sent members of his staff to meet with Academy leaders.<sup>125</sup> In June 2002, a female Academy instructor contacted Senator Allard's office regarding inappropriate behavior at an official English Department Dinner. The complaint involved a sexually-explicit skit that cadets performed and that English Department officials previously approved.<sup>126</sup>

In June 2002, during a Board of Visitors meeting, Senator Allard requested information on the Academy's sexual assault response program and expressed concern about potential sexual misconduct at the Academy.<sup>127</sup> In September 2002, Senator Allard received an e-mail from a cadet's parent providing troubling information about the environment at the Academy, especially with regard to the vulnerability of female cadets. Senator Allard forwarded the e-mail with the parent's accompanying suggestions to General Dallager.<sup>128</sup>

## 2003 – The Secretary and Chief of Staff Address the Problem

As a result of the media attention generated when the current scandal surfaced, the Air Force moved swiftly to address the problem of sexual assault at the Academy. In March 2003, Air Force Secretary Roche and Air Force Chief of Staff General Jumper announced an *Agenda for Change* to implement a series of directives and policy improvements at the Academy. Overall, the *Agenda for Change* corrects many of the conditions that contributed to an

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<sup>123</sup> *Id.*

<sup>124</sup> Statement of Senator Allard to the Panel in Washington, D.C. (June 23, 2003).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

environment which increased the opportunity and likelihood for sexual misconduct. The *Agenda for Change* is a blueprint and should be viewed as only the initial step in reversing years of institutional inaction.

In April 2003, Secretary Roche announced the retirement of Lieutenant General John R. Dallager, Superintendent of the Academy, and the reassignment of Commandant Brigadier General S. Taco Gilbert III, the Vice Commandant, Colonel Robert D. Eskridge,<sup>129</sup> and the Training Wing Commander, Colonel Laurie S. Slavec. Three months later, on July 11, 2003, Secretary Roche announced General Dallager's retirement at the grade of Major General, rather than as a Lieutenant General. According to the press release announcing the retirement at a lower grade, General Dallager failed to exercise "the degree of leadership expected of commanders," and "should have taken notice of the indicators of problems and he should have aggressively pursued solutions to them."

In April 2003, Secretary Roche replaced the Academy's leadership with a new leadership team comprised of Lieutenant General John W. Rosa, Superintendent; Brigadier General Johnny A. Weida, Commandant of Cadets; and Colonel Debra D. Gray, Vice Commandant of Cadets. Since then, General Rosa and his staff have begun implementing changes in the Academy's culture, military training, living environment and sexual assault reporting processes. The changes have not been completed, but the *Agenda for Change* begins to put the Academy back on track.

In June 2003, after completing her investigation of sexual assault at the Academy, Air Force General Counsel Mary L. Walker released *The Working Group Report*. The *Working Group Report* covers many aspects of cadet life, Academy policies and sexual assault reporting procedures in place at the Academy during the last ten years. However, it fails to examine the responsibility of Air Force leadership to provide oversight on the operation of the Academy. Many of the meetings and discussions detailed in this chronology are either completely omitted or only obliquely referenced in the report. It is simply not plausible that the Working Group was unaware of the many instances of involvement by Air Force leadership discussed above, particularly in view of the fact that the same officials involved in these numerous matters — including the Inspector General, Surgeon General, Judge Advocate General and Commander of the AFOSI — were members of the Working Group. Moreover, the lead attorney on the Working Group staff had to have been aware of many of these instances of Air Force leadership

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<sup>129</sup> Colonel Robert D. Eskridge, USAF, had assumed the duties of Vice Commandant in December 2002.

involvement since he chaired the 2000–2001 review conducted by the Sexual Assault Policy Working Group.<sup>130</sup>

Despite the considerable evidence of long-term knowledge by the Air Force, and the persistence of sexual misconduct problems at the Academy, the Working Group concluded that there was “no systemic acceptance of sexual assault at the Academy [or] institutional avoidance of responsibility.”<sup>131</sup> The Panel cannot agree with that conclusion given the substantial amount of information about the sexual assaults and the Academy’s institutional culture that was available to leaders at the Academy, Air Force Headquarters and to the Office of the Air Force General Counsel.

## B. Accountability

This Panel is concerned about the lack of accountability of Air Force leaders in Colorado Springs and in Washington, D.C. The Air Force and the Academy cannot fully put this unfortunate chapter behind them until they understand and acknowledge the cause.

The Panel is aware of the difficulty in holding accountable those who long ago left their positions of responsibility and now are beyond reach of the Department of Defense. However, in order to make clear the exceptional level of leadership performance expected of future leaders and to put the failures of recently removed Academy leadership in perspective, there must be further accounting. To the extent possible, the failures of the Academy and Air force Headquarters leaders over the past ten years should be made a matter of official record.

The significance of the detailed chronology of high-level meetings, working groups, studies and numerous indicators of a sexual assault problem at the Academy is that (1) both Academy and Air Force leadership knew or should have known of the situation throughout the ten years before the recent media attention; and (2) despite the indications of a problem and considerable periods of activity, the Air Force failed to maintain systemic oversight of the issue and to develop a comprehensive approach to solving the problem.

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<sup>130</sup> William K. At Lee, the lead attorney for the Working Group team, was aware of at least some of these meetings and discussions because he chaired the 2000–2001 review conducted by the Sexual Assault Policy Working Group. See, for example, Memorandum from Don W. Fox, Deputy General Counsel (Fiscal & Administrative Law), to Mary L. Walker, Air Force General Counsel (Undated).

<sup>131</sup> *Working Group Report*, at ii, vii, &165.

Other than the reassignment of recent Academy leadership and retiring the immediate-past Superintendent in a lower grade, the Air Force has not held any member of the Academy or Air Force Headquarters leadership accountable for a decade of ineffective action or in many cases inaction, concerning sexual assaults and the culture that tolerated them.

The failure of the Academy and Air Force Headquarters leadership to respond aggressively and in a timely and committed way to eliminate the causes of serious problems was a failure of leadership. Those responsible should be held accountable.

### *1. Air Force Headquarters Leadership*

While the record is not complete, the evidence before the Panel shows that the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action. It may be impossible to ever fully know what the Air Force leadership knew or suspected about sexual assault problems during the past ten years. Nonetheless, the Panel has uncovered substantial information showing that Air Force Headquarters had serious and repeated indicators of a problem. If Air Force Headquarters did not act on this information, or did so tepidly, it should be held accountable for avoiding its responsibility and accepting sexual misconduct as an unavoidable condition at the Academy.

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*While the record is not complete, the evidence before the Panel shows that the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action.*

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It is clear that Air Force Headquarters continually deferred to the Academy and did not intercede, even without tangible evidence of progress on sexual misconduct issues. An example of Air Force Headquarters culpability is the failure to

monitor the unique confidential reporting program that had the potential of interfering with the ability to investigate sexual assaults at the Academy. The decision to allow the Academy to use a program that differed from the one established in the regular Air Force carried with it the obligation to make sure that the program served the interests and safety of female cadets. Air Force Headquarters officers who knew or had reason to know of the problems at the Academy, but who failed to act, bear their share of the responsibility.

## ***2. Academy Leadership***

During his appearance before the Panel, Secretary Roche acknowledged the possible unfairness of holding recent leaders accountable for an institutional climate that evolved over time. Although the immediate past leaders of the Academy cannot be blamed for the situation they found when they arrived at the Academy, they should be accountable for any failures of leadership that occurred on their watch. Clearly, the leaders who arrived at the Academy had lengthy service in the operational Air Force and should have been vigilant in evaluating the Academy's non-standard sexual assault reporting procedures. The fact that the Academy's program departed from the procedures used in the regular Air Force should have heightened the Academy leadership's awareness of the potential for unintended consequences.

General Dallager and General Gilbert failed to exercise the judgment, awareness and resourcefulness necessary to realize that there was a sexual misconduct and social climate problem in their command that directly impacted the welfare and safety of their cadets. The Panel is unimpressed with assertions made by some that General Dallager and General Gilbert should not be held accountable for an institutional culture they inherited. The responsibilities of command required that Academy leaders take the necessary steps to understand the scope and dimensions of the issue and be suitably informed to take appropriate actions.

### ***Major General John R. Dallager***

The Panel concurs with the decision of the Secretary of the Air Force to retire General Dallager in a lower grade. General Dallager failed to exercise the degree of leadership expected of commanders. He did not recognize indicators of problems, nor did he aggressively pursue solutions to those problems. Having been at the helm of the Academy for several years prior to the recent allegations, General Dallager is the Academy leader bearing ultimate responsibility for the failure to adequately respond to sexual assault issues.

### ***Brigadier General David A. Wagie***

Air Force leadership has not taken any action to address the accountability of General Wagie, and he continues to serve as the Academy's Dean of Faculty. General Wagie was the officer at the Academy who had the most responsibility for the sexual assault response program and the administration of Social Climate Surveys. Although year after year the Academy declared the surveys to be statistically invalid, General Wagie never acted to correct the survey

tool. This failure of responsibility interfered with the command's ability to accurately assess the extent of the sexual misconduct problem in the Cadet Wing.

The "invalid" surveys offered startling indicators of a problem that were ignored by General Wagie and Academy leadership. General Wagie was the supervisor for the Cadet Counseling Center and conducted bi-weekly meetings with the head of the Counseling Center. Accordingly, he knew or should have known about the numbers of sexual assaults reported by Academy cadets.

General Wagie had considerable institutional knowledge of the nature and extent of the Academy's sexual misconduct problems due to his responsibilities and lengthy tenure at the Academy spanning 16 years. He held a key leadership position, yet failed to recognize the problems and take appropriate action. General Wagie failed to execute his full responsibilities and contributed to mission failure.

### ***Brigadier General S. Taco Gilbert III***

General Gilbert failed to fully ensure the safety and security of the cadets under his command. Like General Dallager, General Gilbert failed in his leadership responsibilities by not seeking to acquire information on sexual misconduct issues and by failing to take responsibility for finding solutions. As the commander responsible for the safety of the Cadet Wing, it is not enough for General Gilbert to say that others were in charge of the Academy's sexual assault response program. General Gilbert had the responsibility to be informed about sexual assault and gender climate issues at the Academy, and he did not take the steps required to become fully informed. His inaction in this regard jeopardized the safety and security of the cadets under his command with respect to sexual misconduct issues.

The Academy's instruction mandates that the Cadet Counseling Center inform the Commandant of a reported sexual assault immediately "because the Commandant is the commander responsible for both cadet victims and cadet perpetrators. This General Officer must ensure the safety of each cadet and the good order and discipline of the entire Cadet Wing."<sup>132</sup> That same instruction put General Gilbert in charge of the Academy's Sexual Assault Services Committee, but apparently General Gilbert failed to learn about this key responsibility. The Panel understands the practice at the Academy before General Gilbert's assumption of command gave responsibility for the SASC to the Vice Commandant. Nevertheless, as the

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<sup>132</sup> USAFA Instruction 51-201, § 2.8.1.2.1.

senior commander, General Gilbert was obligated to take charge of sexual misconduct issues. General Gilbert failed to execute his responsibilities and directly contributed to mission failure.

General Gilbert also bears responsibility for the shortcomings of his subordinate commander, Colonel Laurie S. Slavec. General Gilbert knew of the perception at the Academy that Colonel Slavec's disciplinary style was "overly draconian, and not fair."<sup>133</sup> General Gilbert advised that he was working to replace Colonel Slavec at the time they were reassigned.<sup>134</sup> Notwithstanding General Gilbert's stated concerns about Colonel Slavec's performance, he awarded her a meritorious service medal on April 15, 2003 praising her "intensive mentorship of cadets, active duty, and civilians [that] had a positive impact on and will continue their ongoing growth for years to come."<sup>135</sup>

The Panel believes that General Gilbert failed to execute his command responsibility concerning consistent supervision of a subordinate commander. He cannot credibly say he was trying to remove Colonel Slavec from command early, and then present her with official recognition of meritorious performance.

### ***Colonel Laurie S. Slavec***

Colonel Slavec was overly aggressive in discharging her command responsibilities and alienated AOCs, MTLs and cadets. Although Colonel Slavec sought to enforce disciplinary standards, she contributed to the breakdown of good order and discipline within her command by taking such aggressive actions that her subordinates viewed her as unfair and overly harsh. Specifically, she created an environment where the perception of fear, punishment and reprisal among the staff and cadets became an accepted reality. Colonel Slavec's leadership style and treatment of some victims of sexual assault had a negative impact on the willingness of cadets to report incidents of sexual assault.

Additionally, while Colonel Slavec was in the first line of responsibility for enforcing disciplinary standards, she was unaware of the definition of sexual assault, held her own definition of a "true rape" as requiring some level of violence, and seemed to hold the attitude that cadets claimed sexual assault only to receive amnesty.<sup>136</sup> As the member of the leadership team closest to the Cadet Wing, Colonel Slavec was in a key position to become aware of the

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<sup>133</sup> Interview by Working Group with General Gilbert in Colorado Springs, Colo. (Mar. 21, 2003), at 74.

<sup>134</sup> *Id.*

<sup>135</sup> Meritorious Service Medal Citation, Colonel Slavec (Apr. 15, 2003).

<sup>136</sup> Statement by Colonel Slavec to Working Group in Colorado Springs, Colo. (Mar. 20, 2003), at 37-38.

problem of sexual assaults. Instead, her inflexible and insensitive attitudes and actions exacerbated problems in the Cadet Wing. Colonel Slavec failed to establish a safe and secure military training environment and failed to execute her command responsibilities in a fair and impartial manner. Through her ineffective leadership, Colonel Slavec directly contributed to mission failure.

### 3. Recommendation

The Chief of Staff of the Air Force has advised this Panel that the issue of accountability among the replaced senior leadership team at the Academy is ongoing. He indicated that he was awaiting the results from the DoD IG and Air Force IG investigations on sexual misconduct allegations before taking final actions. The Panel is concerned, however, that at least one member of the replaced Academy leadership team received a medal in recognition of her performance while assigned to the Academy. The award of a medal to an individual who is still under scrutiny, and in advance of the issuance of the DoD IG and Air Force IG reports, seems premature at best.

The Panel is also concerned about the seeming inability of the Air Force to adequately investigate itself. While the Air Force General Counsel's Working Group conducted a thorough investigation of the Academy, it completely failed to address one of the most significant contributors to the current controversy — ineffective oversight by Air Force leadership. Members of the Working Group knew about the prior involvement of Air Force leadership since they or their offices were engaged in the issues over the past ten years. Yet the General Counsel apparently made a determination not to include any of this information in the *Working Group Report*. Instead, the General Counsel left the matter for another study and another day.<sup>137</sup>

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<sup>137</sup> The *Working Group Report* named twelve areas for further study because the areas were beyond the scope of the report or there was insufficient time for adequate study. The last area recommended for further study was Air Force Headquarters: "Consider to what extent the Headquarters Air Force has been and should be involved in the oversight of the sexual assault and sexual harassment issues in the Air Force, including the Academy." *Working Group Report*, at 175-176.

The Panel recommends that the DoD IG conduct a thorough review of the accountability of Academy and Air Force Headquarters leadership for the sexual assault problems at the Academy over the last decade. This review should include an assessment of the actions taken by leaders at Air Force Headquarters as well as those at the Academy, including General Gilbert, General Wagie and Colonel Slavec. The review should also consider the adequacy of personnel actions taken, the accuracy of individual performance evaluations, the validity of decorations awarded and the appropriateness of follow-on assignments.<sup>138</sup> The Panel further recommends that the DoD IG provide the results of the review to the House and Senate Armed Services Committees and to the Secretary of Defense.

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<sup>138</sup> See, for example, Memorandum from Secretary Widnall to the Secretary of Defense (Aug. 11, 1995).

## IV. COMMAND SUPERVISION AND OVERSIGHT OF THE ACADEMY

During the last decade, attention to the Academy's sexual assault problems ebbed and flowed depending on the interest of the leadership in place at any given time and according to other competing demands for time and resources. The transitory nature of Academy leadership assignments disrupted institutional knowledge and the ability to anticipate and find long-term solutions for complex problems like sexual misconduct. For example, over the past twenty years, Superintendents have served for an average of three years, and Commandants of Cadets typically have served for 18–24 months. At the same time, due to the demands on the Air Force Chief of Staff posed by military operations and other matters, Air Force Headquarters' supervision of the Academy was not always direct or consistent.

This problem in command supervision co-existed with a lack of effective external oversight. Meetings of the Academy's Board of Visitors were not well attended by its members, and the Academy generally shared only good news with the Board. The result was the Board either did not know about sexual misconduct at the Academy until it became the subject of media scrutiny or, in certain instances, unquestioningly accepted Academy assurances that matters were under control. In addition, the Air Force IG did not conduct any inspections of the Academy during the last ten years other than in response to individual complaints. While the Air Force IG regularly conducts compliance investigations of the Major Air Force Commands every three years, the Academy was excluded from such inspections.

The predictable consequence of the combination of leadership turnover, inconsistent command supervision and lack of external oversight was that the Academy was deprived of long-term solutions to the complex problem of sexual assault. Improved supervision and oversight structures are necessary.

### A. Command Supervision of the Academy

Currently, the Superintendent of the Academy reports directly to the Chief of Staff of the Air Force and the Secretary of the Air Force.<sup>139</sup> In his June 23, 2003 appearance before the

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<sup>139</sup> The same chain of command exists for the other Service Academy Superintendents. The Superintendent of West Point reports to the Army Chief of Staff per AR 210-6 (July 26, 2002), sec. 1-6; Dept of the Army, General Order No. 3 (10 Feb. 1977); AR 10-70 (Aug. 15, 1980), sec. 5; and the Superintendent of the Naval Academy reports to the Chief of Naval Operations (OPNAVINST 5450.330 (Feb. 14, 1992), ¶ 3; and OPNAVNOTE 5400 (June 18, 2003), Encl. (4), at 69)).

Panel, Secretary Roche asked the Panel to review the continuation of the command relationship. Secretary Roche noted both the Chief of Staff and the Secretary are involved in numerous other matters and may not be able to devote as much detailed and immediate attention to Academy issues as could an intermediate commander such as the Air Education & Training Command. The Panel has learned that the Air Force is no longer pursuing this proposal.

On August 14, 2003, Secretary Roche directed the Assistant Secretary of the Air Force for Manpower and Reserve Affairs ("SAF/MR"), Michael L. Dominguez, to prepare and implement other oversight processes. In the Memorandum,<sup>140</sup> Secretary Roche directed the Assistant Secretary to work with the Academy Superintendent to ensure effective implementation of the lessons of the *Working Group Report* and the *Agenda for Change*. The Secretary directed the Assistant Secretary to establish and maintain effective processes for substantive review and consideration of the Working Group's recommendations to ensure continuing Air Force Headquarters oversight of the Academy's implementation of the *Agenda for Change* and the Working Group's recommendations. The Secretary further directed the establishment of "*permanent processes* to insure that the Secretary and Chief of Staff of the Air Force are frequently, regularly and adequately informed of significant matters relating to sexual assault and sexual harassment at the Academy" (emphasis added).<sup>141</sup>

At the same time that it publicly released the August 14, 2003 Memorandum, the Air Force also released a plan for ensuring implementation of the *Agenda for Change*, the results of the *Working Group Report*, and "any agreed to recommendations of the Fowler Commission." According to the Deputy Assistant Secretary of the Air Force, Force Management & Personnel ("SAF/MRM"), the three main points of the plan are oversight, support and assessment.

The plan sets certain milestones and establishes a management apparatus which includes a General Officer Steering Committee, an Executive Steering Group and a Project Manager. The Executive Steering Group consists of the Vice Chief of Staff of the Air Force, the SAF/MR, the Air Force General Counsel and the Academy Superintendent, and most likely will

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<sup>140</sup> Memorandum from Secretary Roche to Michael L. Dominguez, Assistant Secretary of the Air Force for Manpower and Reserve Affairs (Aug. 14, 2003) (Subject: "Oversight of Implementation of the Academy *Agenda for Change* and Recommendations of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the Air Force Academy").

<sup>141</sup> *Id.*

evolve into a permanent structure providing oversight to the Academy. The plan contains a one-year expiration date, which will likely be extended next year.<sup>142</sup>

The Panel believes that the management plan set forth above could provide the supervision required by the Academy if the Air Force were to institutionalize the plan as a permanent oversight structure.

The Assistant Secretary is considering other initiatives to provide continual oversight of the Academy, including the following: the Air Force Chief of Staff's annual climate survey shall now include the Academy; the Air Force IG shall conduct regular compliance inspections of the Academy at least every three years; the Air Force Auditor General shall conduct regular audits of the Academy; the function of liaison with the Board of Visitors shall be moved from the Academy to the Air Force Secretariat; and there shall be additional emphasis on Academy issues at all CORONAs,<sup>143</sup> especially the Fall CORONA held at the Academy. In addition, the Panel has been advised that the Air Force is drafting a directive to establish a permanent performance management system, including specific goals, for the Academy.

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*The Panel is concerned that the processes and procedures are not yet embodied in a permanent organizational structure.*

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The Panel finds these initiatives represent significant efforts by senior Air Force leadership to monitor and oversee the implementation of processes and procedures for sexual assault prevention and response recommended in the *Working Group Report* and directed by the *Agenda for Change*. However, the Panel is concerned the processes and procedures are not yet embodied in a permanent organizational structure. Accordingly, The Panel recommends that the Secretary of the Air Force adopt the management plan announced on August 14, 2003, including the creation of an Executive Steering Group, as the permanent organizational structure by which senior Air Force leadership will exercise effective oversight of the Academy's deterrence of and response to incidents of sexual assault and sexual harassment.

In addition to maintaining an Air Force entity external to the Academy to provide effective oversight, it is important to ensure that the tenures of key Academy personnel are

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<sup>142</sup> Interview by Panel Staff with Assistant Secretary Dominguez in Arlington, Va. (Sept. 8, 2003).

<sup>143</sup> CORONA meetings are attended by the Secretary and Chief of Staff of the Air Force, all Assistant Secretaries, the General Counsel, all four-star Air Force generals, and the Superintendent of the Academy.

sustained for an appropriate period of time to provide an effective balance between the need for stability and the need for reinvigorated leadership. The Panel is concerned that the short tenures of the prior Superintendents and the Commandants of Cadets contributed to a lack of continuity in leadership that prevented the Academy from achieving enduring solutions to its sexual misconduct problem. Accordingly, the Panel recommends the Air Force extend the tour length of the Superintendent to four years and the tour length of the Commandant of Cadets to three years in order to provide for greater continuity and stability in Academy leadership.

Conversely, the Panel is concerned that the Dean of Faculty may have become too ingrained in the Academy's institutional culture to have fully appreciated the indicators of a sexual misconduct problem. Currently, it is a statutory requirement that the Dean of Faculty be appointed from among the permanent professors who have served as heads of departments of instruction.<sup>144</sup> This requires the Dean of Faculty position be filled by an individual who has already served at the Academy for some time and it precludes expanding the pool of potential candidates to qualified individuals outside of the Academy. Accordingly, the Panel recommends that the Air Force prepare a legislative proposal to revise 10 U.S.C. § 9335(a) to expand the available pool of potential candidates for the position of Dean of Faculty beyond the current limitation to permanent professors.

## B. External Oversight – The Board of Visitors

Statutorily established by 10 U.S.C. § 9355,<sup>145</sup> the Academy's Board of Visitors consists of fifteen members.<sup>146</sup> Representative Joel Hefley (R-CO), the Vice-Chair, is currently the Acting Chairman. The next scheduled meeting of the Board of Visitors is October 10-12, 2003 at the Academy. This is the Board's annual visit to the Academy mandated by 10 U.S.C. § 9355 (d). The Board is required to submit a written report to the President describing its actions, views

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<sup>144</sup> 10 U.S.C. § 9335(a) (2003) provides that the "Dean of Faculty shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy."

<sup>145</sup> The Naval Academy and West Point have similar statutorily established Boards of Visitors. *See*, 10 U.S.C. § 6968 (2003) (Naval Academy); and 10 U.S.C. § 4355 (2003) (West Point).

<sup>146</sup> These members include four senators (one appointed by the Chairman of the Armed Services Committee; three designated by the Vice President or President pro tempore of the Senate, two of whom are members of the Appropriations Committee); five representatives (one appointed by the Chairman of the Armed Services Committee; four designated by the Speaker, two of whom are members of the Appropriations Committee); and six persons designated by the President. The Presidential appointees serve for 3-year terms, while each of the Congressional appointees serve annually, but may be, and often are, reappointed.

and recommendations pertaining to the Academy within sixty days after its annual visit. The statute requires the Board to “inquire into morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider.”<sup>147</sup>

The Board of Visitors has come under considerable criticism for its perceived shortcomings, both in the context of sexual assault at the Academy and in working to identify the Academy’s needs. In his appearance before the Panel on July 23, 2003, Senator Allard, a member of the Board of Visitors, stated that the Board of Visitors was established to provide oversight of the Academy, but the members were usually provided only a slide show stating the institution’s accomplishments, met with only one or two hand-picked cadets and were taken on a tour of the Academy. Senator Allard also expressed his view that being a member of the Board of Visitors “should not be merely a ceremonial honor. Membership should come with responsibility and commitment to make oversight of the Academy a top priority.”<sup>148</sup>

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In his June 23, 2003 appearance before the Panel, Secretary Roche noted the Board of Visitors was composed of busy people donating their time, still he made clear his disappointment in the Board’s oversight.<sup>149</sup> He stated his desire that the Board be more akin to a board of directors of a firm, responsible to the “shareholders” of the Academy, i.e., the U.S. taxpayers, which it currently is not.

The Academy’s Director of Plans & Programs, Colonel James W. Spencer, advised that typical attendance at the Board’s meetings is low.<sup>150</sup> Some Board members have apparently not attended any meetings, while others are credited with attending the entirety of multi-day meetings at which they were present for only a few hours or less. Attempts to hold meetings in Washington, D.C. to accommodate the schedules of Congressional members, including scheduling meetings in August during the Congressional recess, did not substantively improve

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<sup>147</sup> 10 U.S.C. § 9355(e).

<sup>148</sup> Statement of Senator Allard to the Panel in Washington, D.C. (June 23, 2003), at 28-29.

<sup>149</sup> Statement of Secretary Roche to the Panel in Washington, D.C. (June 23, 2003), at 49-98.

<sup>150</sup> Interview by Panel Staff with Colonel James W. Spencer, Director of Plans and Programs, USAFA, in Colorado Springs, Colo. (July 10, 2003).

attendance. Less than one-half of the Congressional members typically attend, while two-thirds of the civilian (Presidential appointee) members attend. In 2001, the Board of Visitors had no formal meeting. Colonel Spencer also noted that the Academy has found it difficult to get the Board to approve agendas for and reports of its meetings, even though the Academy would prepare proposed drafts for the Board's input, approval and criticisms. The Academy has also had problems in getting the Board to address issues deemed substantive or important by the Academy, and has found that the meetings often tended to be social gatherings.

University trusteeship (in Academy terms, membership in the Board of Visitors) imposes important fiduciary responsibilities. Each candidate for appointment to the Board of Visitors should be considered with particular emphasis on his or her willingness to undertake these responsibilities. All current members should be reminded of them. Their discharge must be regular, reliable and well informed.

Upon selection, each new member should meet with the Chairman of the Board for a presentation on the new member's duties. Among these duties are regular attendance at all Board meetings, the number to be increased to four annually; careful preparation for each meeting; assignment to one or more sub-committees of the Board; and preservation of a vigilant, probing frame of mind — one not satisfied with being “fed” information by the institution, but one which scrutinizes all aspects of the Academy.

Informed trustees of universities, invariably leaders in their own fields of endeavor and communities, are in a strong position to represent the institution and to accurately answer questions about it; and, they cultivate an objective frame of mind in considering various issues at the institution as they arise. University trusteeship is the academic equivalent of corporate Governance in business, and the principles applying to the latter offer guidance to the former.

The Board of Visitors should establish regular visits with randomly-chosen groups of cadets, male and female, from all classes, for an hour or two during each Board meeting at the Academy. It is not enough to have a meal with the Wing staff, one or two carefully selected Rhodes scholars, or the Head of the Cadet Honor Court.

The Academy is a great national military school — a form of small university continuing to attract the ablest of our young people — young women and men of character, intelligence and patriotism. Such an institution demands a Governing board of singular commitment and trust. The information provided to the Panel paints an entirely different picture regarding the Board of Visitors which, to date, has provided little effective oversight of gender issues, the

attitude and climate concerning women and the existence and handling of sexual assault and other sexual misconduct at the Academy.

The Panel's recommended changes to the composition of the Board of Visitors and for improving its functioning pertain only to the Air Force Academy Board of Visitors. Air Force Headquarters is currently considering the establishment of effective mechanisms for the oversight of the Academy, including a revitalized role for the Board of Visitors. In furtherance of this revitalization, the Panel recommends that the Board of Visitors:

- Operate more like a corporate board of directors with regularly organized committees charged with distinctive responsibilities (*e.g.*, academic affairs, student life, athletics, etc.). The Board shall meet not less than four times per year, with at least two of those meetings at the Academy. To the extent practical, meetings shall include at least one full day of meaningful participation and shall be scheduled so as to provide the fullest participation by Congressional members. Board members must have unfettered access to Academy grounds and cadets, to include attending classes and meeting with cadets informally and privately; and
- Receive candid and complete disclosure by the Secretary of the Air Force and the Academy Superintendent of all institutional problems, including but not limited to, all gender related matters, cadet surveys and information related to culture and climate and incidents of sexual harassment and sexual assaults.

The Panel also recommends that the Air Force prepare a legislative proposal to revise 10 U.S.C. § 9355. The suggested revisions should include both the foregoing and following recommendations:

- Changing the composition of the Board to include fewer Congressional (and, therefore, more Presidential-appointed) members, more women and minority individuals and at least two Academy graduates;
- Requiring that any individual accepting an appointment as a Board member pledge full commitment to attend each meeting of the Board, and to carry out all of the duties and responsibilities of a Board member, to the fullest extent practical;

- Terminating any Board member's appointment for failing to attend or fully participate in two successive Board meetings, unless granted prior excusal for good cause by the Board Chairman;
- Providing clear oversight authority of the Board over the Academy, and direct that, in addition to the reports of its annual meetings required to be furnished to the President, it shall submit those reports and such other reports it prepares to the Chairmen of the Senate and House Armed Services Committees, the Secretary of Defense and the Secretary of the Air Force, to identify all matters of the Board's concerns with or about the Air Force Academy, and to recommend appropriate action thereon; and
- Eliminating the current requirement for Secretarial approval for the Board to visit the Academy for other than annual visits.

### C. External Oversight – Congress

The Panel is cognizant of the critical role of Congressional oversight of the Executive branch of Government. The importance of that oversight is underscored by the recent problems at the Academy.

In Section III.B.3 above, the Panel recommended the DoD IG conduct a thorough review of the accountability of Academy and Air Force Headquarters leadership for the sexual assault problems over the last decade; the Panel further recommended the DoD IG provide the results of the review to the House and Senate Armed Services Committees. Additionally, the Panel encourages the Armed Services Committees to provide oversight of the results of the ongoing Air Force IG and DoD IG investigations, since neither investigation was completed during the term of the Panel.

The Panel notes that the proposed National Defense Authorization Act for Fiscal Year 2004 contains several provisions to address sexual misconduct at the Service Academies.<sup>151</sup> The legislation requires an annual assessment of each Academy's policies, training and procedures to prevent sexual misconduct and an annual report on sexual misconduct. The annual report must address the following matters:

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<sup>151</sup> National Defense Authorization Act for Fiscal Year 2004, H.R. 1558, 108th Cong., Title V, § 534 (2003).

- The number of sexual assaults, rapes and other sexual offenses involving academy personnel that have been reported to academy officials, and the number of the reported cases that have been substantiated;
- The policies, procedures and processes implemented by the Secretary of the Military Service and the leadership of the academy in response to sexual misconduct involving academy personnel;
- The results of the annual survey; and
- A plan for the actions to be taken in the following academy program year regarding prevention of and response to sexual misconduct involving academy personnel.<sup>152</sup>

The legislation requires transmission of the annual report to the Secretary of Defense, the Board of Visitors and the Committees on Armed Services. The Panel is confident that this legislation shall provide a meaningful vehicle for Congressional oversight of sexual misconduct at the Service Academies and shall enhance the oversight capacity of the Boards of Visitors.

## D. External Oversight – The Inspector General

The legislation establishing the Panel and setting out its duties requires the Panel to “review, and incorporate as appropriate, the findings of ongoing studies being conducted by the Air Force General Counsel and Inspector General.”<sup>153</sup> These studies include an investigation of individual cases involving sexual assault allegations at the Academy. The report of the Air Force IG is not expected to be issued until well after the date of this report. However, the Air Force IG and some of his representatives appeared before the Panel on July 31, 2003 in closed session to discuss some of the evidence collected to date. The Panel is satisfied with the Air Force IG’s objectives and plan for achieving those objectives.

The DoD IG is also currently conducting an investigation and appeared before this Panel. In late August 2003, the DoD IG provided the Panel with preliminary data pertaining to its May 2003 initial survey of female cadets at the Academy, designed to indicate the scope of recent sexual assault incidents and assess the sexual assault climate at the Academy.<sup>154</sup> On

<sup>152</sup> *Id.*

<sup>153</sup> Pub. L. No. 108–11, § 501(c), 117 Stat. 559 (2003).

<sup>154</sup> DoD IG, *Initial Sexual Assault Survey Findings* (May 2003).

September 11, 2003, the DoD IG provided the Panel with its follow-on *Report on the United States Air Force Academy Sexual Assault Survey* ("DoD IG Survey"). The DoD IG Survey expanded on the data from the May 2003 survey. The survey of 579 female cadets in Academy classes 2003-2006 (87.9% of the total female population) found, among other things:

- 43 cadets (7.4% of all respondents) – including 15 members of the Class of 2003 (11.7% of that class) – indicated they had been victims of at least one rape or attempted rape in their time at the Academy;
- 109 cadets (18.8% of all respondents) indicated they had been victims of at least one instance of sexual assault<sup>155</sup> in their time at the Academy;
- Cadets indicated that only 33 (18.6%) of the 177 sexual assault incidents were reported to the authorities; 143 (80.8%) were indicated as not reported;
- 143 of the 177 sexual assault incidents were recorded by the victims as not being reported to any authority because of embarrassment (in 77 incidents), fear of ostracism by peers (in 66 incidents), fear of some form of reprisal (in 61 incidents) and the belief that nothing would be done (in 58 incidents).
- The top two reasons given for why cadets thought that victims were not reporting (after embarrassment) were fear of ostracism by peers and fear of being punished for other infractions.

Especially disturbing was the DoD IG Survey finding that 88.4% of cadets who were rape or attempted rape victims disagreed or strongly disagreed with the statement that "most cadets are willing to report a sexual assault incident regardless of loyalty to the offender."<sup>156</sup> The DoD IG reports that it plans to conduct a more robust survey of all three Service Academies in the fall of 2003.

The DoD IG also provided the Panel with data on sexual assaults investigated over the last 10 years extracted from the criminal investigative files at AFOSI.<sup>157</sup> Overall, the DoD IG found that the cases referred to the AFOSI were adequately investigated. However, delays in reporting, a factor which is outside of the control of AFOSI, adversely affected the quality of the investigations.

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<sup>155</sup> The DoD IG Survey noted that the Air Force considers the definition of sexual assault used in the survey to be too broad and may result in a higher count of sexual assault incidents than is actually warranted. The DoD IG concluded, however, that the definition is not so broad as to suggest that the majority of incidents claimed were improperly classified by the respondents as sexual assault.

<sup>156</sup> DoD IG, *Initial Sexual Assault Survey Findings* (May 2003), at 34.

<sup>157</sup> DoD IG *Review of Sexual Assault Investigations at the Air Force Academy* (Aug. 26, 2003).

The DoD IG team singled out for review criminal investigations of sexual assaults reported during the period January 2000 to February 2003. There were 18 sexual assaults investigated during that period, and 6 of them concerned cadet-on-cadet (female victim) sexual assaults. One of the 18 cases contained investigative deficiencies, which the DoD IG team felt may have hindered adjudication.

As discussed above, the Air Force IG will be conducting regular compliance inspections of the Academy at least every three years. These inspections should supplement other external oversight mechanisms for the Academy.

## V. ORGANIZATIONAL CULTURE AND CHARACTER DEVELOPMENT

As part of the review of the relationship between the command climate for women at the Academy, including factors that may have produced a fear of retribution for reporting sexual misconduct and the circumstances that resulted in sexual misconduct at the Academy, this Panel examined the organizational culture of the Academy and programs aimed at character development and training which may have resulted in the failure of some cadets to live honorably — and indeed, to commit sexual assaults on their fellow cadets. This section discusses the gender climate at the Academy, including the statistical representation of women; tools for assessing the gender climate and gender bias; aspects of character development such as the Honor Code and the Center for Character Development; and cadet training.

### A. Gender Climate

#### 1. *Statistical Representation*

To understand the cultural elements at the Academy that contributed to the occurrence of sexual misconduct, including sexual assault and rape, there first must be an understanding of the statistical representation of women at the Academy and in the Air Force. Each year, the Academy accepts approximately 1,200 cadets into its freshman class.<sup>158</sup> The incoming class of 2007 has 1,302 cadets, of which 221 (17%) are women.<sup>159</sup> This closely matches the current gender composition of the Air Force. Following Basic Cadet Training (BCT) and the acceptance parade, all cadets are assigned to the Cadet Wing.

The Cadet Wing at the Academy is structured similar to an active duty Air Force Wing. The Wing is broken out into four Groups, and each Group is further subdivided into nine squadrons. The First-Class cadets make up the Cadet Officer leadership, and Second-Class cadets fill the Cadet Non-Commissioned Officer leadership positions. Each Squadron is assigned an active duty officer, Air Officer Commanding ("AOC"), and an active duty non-commissioned officer, Military Training Leader ("MTL"), to mentor and assist the cadet leadership and entire squadron in its training and educational missions.

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<sup>158</sup> *Working Group Report*, at ii.

<sup>159</sup> E-mail from Colonel William Carpenter, USAF, Director of Admissions, USAFA, in response to Panel Staff inquiry (Aug. 11, 2003).

For each semester (fall and spring) for the class years 1997-2001, the Academy had, on average, 155 cadet First-Class leadership positions. Women filled an average of 24 positions, or approximately 15.5% of those positions. The actual percentage fluctuated greatly by semester, with a low of 11.3% and a high of 24.1%.<sup>160</sup> This year at the Academy, of the sixty-four AOCs and MTLs, five AOCs<sup>161</sup> and eight MTLs are women.<sup>162</sup> This translates to 20% of all AOCs and MTLs. The 2003 statistics represent an increase, up from 10.4% last year, which was a disproportionately low number of female role models.

While the *Agenda for Change* does not mandate quotas, it does announce personnel policy provisions that may increase the likelihood of more female role models filling the critical position of AOC. Henceforth, AOCs shall be specially selected and academically prepared to assume the unique duties of leading, mentoring and training cadets. However, the *Agenda for Change* is silent as to MTL assignment policies. The Air Force should conduct the same review of Non-Commissioned Officer assignment policies and tour lengths at the Academy as it is conducting for officer assignments policies.

Currently 99.7% of all Air Force positions are open to women, a higher percentage than the Navy (94%), the Army (67.2%) or the Marine Corps (62%).<sup>163</sup> Since restrictions on the Air Force's most prestigious combat pilot positions were lifted in 1993, the numbers of women flying fighter, bomber and special operations aircraft has steadily increased, but still remain low.<sup>164</sup>

<sup>160</sup> A 1993 GAO review of the representation of women in cadet leadership positions for the classes of 1988 to 1992 found that women were represented in proportion to their percentage of the Cadet Wing. GAO Report, *Air Force Academy: Gender and Racial Disparities* (Sept. 1993).

<sup>161</sup> Two additional female Air Officers Commanding ("AOC") are currently enrolled in the newly created graduate program, and will serve as full-time AOCs beginning next year. See E-mail from Major Joel A. Jones, USAF, 34th Training Wing Executive Officer, to Panel Staff (Aug. 13, 2003).

<sup>162</sup> In 2002, there was one female AOC and six female Military Training Leaders ("MTL"), which translates to 10.4%. *Working Group Report*, at 108.

<sup>163</sup> MARGARET C. HARRELL ET AL., *THE STATUS OF GENDER INTEGRATION IN THE MILITARY: ANALYSIS OF SELECTED OCCUPANTS 5* (2002).

<sup>164</sup> For example, in 2001 there were 21 female F-16 pilots, which is 1.3% of 1,620 total in this occupation. *Id.* at 97.

This Panel believes it is critical that all cadets have a sufficient number of highly-qualified role models, both male and female, from whom they can seek guidance, gain knowledge and mirror performance. These relationships are vital to the cadets' preparation for

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entry into the active duty Air Force which is made up of 17.8% female officer and 19.8% female enlisted airmen, larger percentages than any other Service.<sup>165</sup>

## 2. Climate Assessment Tools

Statistics in and of themselves do not provide true insight into the actual cultural climate for women at the Academy. Social Climate Surveys, on the other hand, are a standard tool implemented by commanders across the Services to keep informed about sensitive issues and the attitudes of service

members. The Academy conducted climate surveys on such issues as adherence to the Honor Code, alcohol use, fraternization and discrimination. In 1996, the surveys began to include questions on sexual assault.

These Social Climate Surveys were, in general, poorly constructed and administered. Although the Academy recognized design and sample flaws early on, these errors were repeated year after year. Academy leaders declared the surveys invalid each time and dismissed the findings. They then administered the same survey each following year. Even cadets complained in written comments on the survey about the instrument's errors (e.g., the term is "MTL," for Military Training Leader, not "MTA") and the effect of its length (about 100 questions) on obtaining valid and complete surveys. Because these problems remained unaddressed from year to year, it is not surprising that some cadets doubted whether their responses could make a difference. Given the importance of these issues to the student body, the Panel is troubled that Academy leadership allowed the continued incompetence in administering these surveys.

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<sup>165</sup> Roughly 15% of the Army and Navy officer and enlisted personnel are women; only 5.4% of Marine officers and 6.1% of Marine enlisted are women. *Id.* at 5.

Even given unrepresentative findings, cadet responses and written comments should have alerted leadership that improved questionnaires would provide valuable insights, and that certain issues were worthy of immediate investigation. For example, survey statements such as the following should have been cause for concern:

*"Though I have not been subject to sexual assault, two of my friends have been during the spring semester. Both were raped by other cadets, and neither disclosed this information. I think this serves as testimony to the unstable social climate at USAFA, a fact not everyone seems conscious of."*<sup>166</sup>

*"There's a lot of stuff that goes on here assault-wise that's not reported. I know of 2 friends of mine who have been ass[a]ulted and don't seek help or pro[s]ecution because of what they see happens to victims...."*<sup>167</sup>

The Panel recommends that the Academy draw upon climate survey resources at the Air Force Personnel Center Survey Branch for assistance in creating and administering the surveys. Further, the Panel recommends that the Academy should keep centralized records of all surveys, responses and reports and keep typed records of all written comments (not abbreviated or paraphrased) – to be provided as an appendix to any report. All such reports must be provided to Academy leadership.

### 3. Gender Bias

The Air Force has led the way in the integration of women into the Service Academies. Although integration was not mandated until 1976, in 1972 the Air Force was the sole Service to begin strategizing the integration of women.<sup>168</sup> During the first year of integration, the Air Force Academy accepted women as 10% of its incoming class (compared to 6% at the Naval Academy and 8% at West Point) and those women graduated at a higher rate than their counterparts at the Naval Academy and West Point.<sup>169</sup>

<sup>166</sup> USAFA Social Climate Survey (2002) (comment by female Fourth-Class cadet).

<sup>167</sup> USAFA Social Climate Survey (2002) (comment by female First-Class cadet).

<sup>168</sup> Although these years of advance preparation did not mean the integration proceeded flawlessly. JUDITH HICKS STIEHM, *BRING ME MEN AND WOMEN: MANDATED CHANGE AT THE U.S. AIR FORCE ACADEMY* (1981).

<sup>169</sup> *Id.*

As discussed above, only 17% of the Class of 2007 are women. Along with this gender disparity, female cadets have stepped into an environment in which approximately one in five male cadets believe women do not belong at the Academy.<sup>170</sup> As recently as the 2002 surveys, some male cadets took the time to respond with specific written derogatory comments regarding the presence of women at the Academy including, “even with women in the Armed Forces, they should not be at the military academies,”<sup>171</sup> and “women are worthless and should be taken away from USAFA.”<sup>172</sup>

These statistics and comments are even more striking when one considers that the first women graduated from the Academy in 1980. For over a quarter of a century, nearly half of the Academy’s existence, women have been part of the corps of cadets and have made significant contributions to both the Academy and the Air Force.

The Panel has also received reports that members of the graduating class of 1979 routinely attend Academy functions, including athletic events, and display license plates, caps, and t-shirts with the logo “LCWB.” The logo supposedly stands for “Last Class With Balls” or “Last Class Without Bitches (or Broads).” While some may find this public display of animosity toward the presence of women at the Academy humorous, it contributes to an environment in which female cadets are made to feel unwelcome. In the Panel’s view, sanctioned displays which are derogatory toward women diminish the role and value of women, fuel the attitudes described by an alarming number of male cadets in the climate surveys and contribute to an environment that is unwelcoming of women.

#### 4. Dormitory Safety and Security

In the recently released partial findings of the DoD IG’s survey of female cadets conducted in May 2003, an overwhelming majority (over 90%) indicated that they feel “very safe” or “safe” in every location at the Academy, except when “alone on the Academy grounds during hours of darkness.”<sup>173</sup> Given that over half the investigated allegations of sexual assault

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<sup>170</sup> This figure is according to survey results provided by the Academy for surveys conducted in 1998, 2000, 2001 and 2002. In 1998, 20.6% of the male cadets didn’t believe women belonged at the Academy. In 2000, the number was 21.4%. In 2001, 20.9% of male cadets held this same belief. And, in 2002, 26.9% of the male cadets didn’t believe women belonged at the Academy. (Charts showing male and female cadets’ responses to these and related survey questions are included as *Appendix I*.)

<sup>171</sup> USAFA Social Climate Survey (2002) (comment by male Second-Class cadet).

<sup>172</sup> USAFA Social Climate Survey (2002) (comment by male Fourth-Class cadet).

<sup>173</sup> Then, 68.9% felt “very safe” or “safe”; 20% felt “somewhat safe”; and 10.9% felt “unsafe” or “very unsafe.” DoD IG, *Initial Sexual Assault Survey Findings* (May 2003).

occurred in the dormitories,"<sup>174</sup> supervision of the cadets in the dormitories, alcohol consumption and policies, and rules on emergency access to telephones served as the focus of the Panel's attention.

#### a. Supervision

Prior to the adoption of the *Agenda for Change*, the dormitories were effectively unsupervised from 30 minutes past Taps (10:30 p.m. weekdays, 12:00 a.m. on training weekends, and 1:30 a.m. on non-training weekends) until 6:00 a.m. The AOC and MTL offices are located in the dorms, but the staff would normally depart in the early evening during the week and by mid-afternoon on training weekends. A single Officer of the Day and cadet Senior Officer of the Day patrolled from 7:00 p.m. until 11:30 p.m., after which time they slept in the training wing operations center in the cadet area. According to a Deputy Group AOC, three random and periodic inspections were required of the patrol area, including the two dormitories, the cadet field house, the library, Mitchell and Arnold Halls, the cadet chapel, cadet parking lots and the gym.<sup>175</sup>

Each squadron had a Cadet Charge of Quarters ("CCQ") to oversee its dormitory area from 6:00 a.m. until 30 minutes past Taps. The *Working Group Report* found that even though the CCQs were charged with enforcing dorm standards, this proved difficult because they had little control over First- and Second-Class cadets, who could be superior in rank.<sup>176</sup> The *Agenda for Change* makes no reference to this issue.<sup>177</sup> The Panel is of the opinion that cadets should understand the CCQ speaks for the cadet chain of command and the AOC/MTL. If the AOC/MTL and cadet leadership support the actions of the CCQ, the system will promote the valuable purpose of providing discipline within the dormitory.

The *Agenda for Change* did increase the after-hours patrol by an AOC/MTL to 24 hours. For additional officer/NCO presence in the dorms, the Academy added four Officers of the Day (one from each group) and required patrol of the cadet area 24 hours a day. Although the Panel appreciates that patrolling will not prevent all incidents of sexual assault, the increased

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<sup>174</sup> *Working Group Report*, at 101.

<sup>175</sup> *Id.* at 104-105.

<sup>176</sup> *Id.* at 104.

<sup>177</sup> This Panel notes that such Charge of Quarters duty, with disparity in rank issues, is not unusual in the active force, nor is it foreign in the cadet environment. Specifically, the Panel notes that the majority of the Security Forces assigned to the Academy are technically junior in rank to any cadet. Yet, no one would doubt the authority of, for example, a Security Forces Airmen, to investigate offenses allegedly committed by cadets, or that same Airmen's authority to apprehend a cadet suspect.

presence and the potential for random appearance of supervision should certainly increase the safety and security of the dormitories.

#### b. Alcohol Consumption and Policies

At least 40% of investigated cadet-on-cadet sexual assault allegations involved the use of alcohol by the cadet suspect, the cadet victim, or both.<sup>178</sup> The *Agenda for Change* addressed the use of alcohol by mandating immediate disenrollment of any cadet found to have provided, purchased for, or sold alcohol to an underage cadet.<sup>179</sup>

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*The Panel is optimistic about the efforts of the new Commandant of Cadets.*

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Additionally, the Panel is optimistic about the efforts of the new Commandant of Cadets. General Weida told the Panel that he has placed an emphasis on encouraging staff and faculty to join the upper class cadets at "Hap's Place,"<sup>180</sup> the sports bar located within Arnold Hall in the cadet area.<sup>181</sup> Senior officer attendance and participation in cadet life, to include setting the example of responsible drinking and appropriate behavior related to alcohol consumption, shall provide a valuable learning experience. We trust the staff and faculty shall follow through with this important mission. **The Panel recommends that the Academy place a renewed emphasis on education and encouragement of responsible consumption of alcohol for all cadets.**

#### c. Telephone Access

Some female cadets expressed concern to the Panel that gaining access to phones to register a complaint, call the hotline, or seek help for a sexual assault would be difficult or near impossible. They stated there are a limited number of phones, and expressed concern about the locations of the phones and the requirement that Fourth-Class cadets get permission to use them. Following graduation of the First-Class cadets, rising Third-Class cadets may purchase

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<sup>178</sup> *Working Group Report*, at 96.

<sup>179</sup> The *Agenda for Change* provision does not require immediate disenrollment for underage drinking.

<sup>180</sup> E-mail from Colonel Steven R. Eddy, USAF, to Panel Staff (Aug. 29, 2003). Hap's Place is open Monday to Thursday, from 6:30 p.m. to 10:00 p.m. for use by first-class cadets who are 21 years of age or older. On average, 50-75 cadets attend Mondays to Wednesdays and 100-150 on Thursdays, when there is either cadet entertainment or hired entertainment. A business decision keeps Hap's Place closed on the weekends due to lack of income in the past. It is, however, open the first Friday of every month now, known as "First Friday," based upon the Commandant's decision to encourage the leadership team to socialize with the cadets.

<sup>181</sup> Statement of Brigadier General Johnny A. Weida, USAF, Commandant, USAFA, to the Panel in Colorado Springs, Colo. (July 11, 2003).

and carry cellular phones for personal use. Nearly all upper class cadets, male and female, seemed to be in possession of phones which a Fourth-Class cadet could use in an emergency. However, to ensure the safety of every cadet, the Panel recommends that the Academy implement a policy permitting unrestricted (i.e., no explanation required at any time) private access to telephones for use by any cadet, including Fourth-Class cadets, in an emergency.

## B. Character Development

The Panel concurs with the *Working Group Report* that sexual assault in the environment of the Academy represents a failure of character,<sup>182</sup> and that sexual assault is a character-related problem.<sup>183</sup> The development of character — personal integrity — is a fundamental mission of the Academy. The cornerstone of the Academy's culture is two-fold: (1) the Honor Code; and (2) the Air Force's "Core Values." The Honor Code mandates that cadets "will not lie, steal, or cheat, nor tolerate among [them] anyone who does." The Air Force Core Values require *Integrity First, Service Before Self, and Excellence in All We Do*. The cadet environment and organizational culture at the Academy revolve around these pillars. Uniformly, the cadets with whom this Panel interacted subscribe to live by these pillars; however, by their actions, perpetrators of sexual assaults do not. Because character is a key aspect in the deterrence of sexual assault,<sup>184</sup> deficiencies in either the Honor Code System or in the character development programs may contribute to or foster the occurrence of sexual assault at the Academy.

### 1. Honor Code

The American public expects officers in all Military Services to perform their duties in our nation's defense while maintaining the highest standards of integrity. This public obligation is instilled at the Academy from the very beginning of a cadet's career through many avenues, the foremost being the Honor Code. The Honor Code is meant to represent the "minimum standard" of conduct for cadets. This minimum standard is often referred to as the "letter of the code" and is the foundation upon which each cadet builds a personal concept of professional ethics.<sup>185</sup>

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<sup>182</sup> *Working Group Report*, at vi.

<sup>183</sup> *Id.* at 15.

<sup>184</sup> *Id.* at 26.

<sup>185</sup> See excerpt from the Honor Code Reference Handbook, available at <http://www.usafa.af.mil/wing/34cwc/cwch/cwchmb.htm>.

While cadets operate the Honor System, an active duty officer mentor supervises the process.<sup>186</sup> Although disenrollment is the presumptive sanction for an Honor Code violation, cadets are taught and understand that factors such as the egregiousness of the offense, the amount of time the cadet has lived under the Code (cadet class), the cadet's prior history, and any other relevant circumstances will be considered in order to determine if probation<sup>187</sup> is a more appropriate sanction.<sup>188</sup> According to a report in 2001 by General Michael P.C. Carns, USAF (Ret.), a majority of cadets hold the belief that disenrollment as the presumptive sanction for an Honor Code violation should be abandoned, especially in cases of toleration.<sup>189</sup> A former Academy faculty member involved with the Honor System and Character Development Program agrees with this belief,<sup>190</sup> and holds the view that the entire Honor System must be reworked in the light of the current sexual assault problems. This faculty member asserts that cadets are unwilling to report their peers for violations because they fear that their peers will be disenrolled.<sup>191</sup>

While thought provoking, these views are not consistently held by all cadets at the Academy.<sup>192</sup> Cadets holding positions within the Honor System, including Honor Representatives and Wing Honor Board members, were unanimous in urging that

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<sup>186</sup> The officer mentor on the Wing Honor Board must be an O-4 or above and a graduate of a service Academy or have worked with cadets at the Academy for at least one year. (See Honor Code Reference Handbook § 2.7.6.3 at 34.) The purpose of the officer mentor at Wing Honor Board proceedings is to offer lessons and insights acquired from experience as part of the active duty Air Force. The officer mentor takes part in all proceedings of the Wing Honor Board, to include questioning the respondent and witnesses, reviewing evidence, and taking part in deliberations. The officer mentor does not have a vote in the determination of violation/no violation. See Interview by Panel Staff with Cadet Honor Committee Representatives in Colorado Springs, Colo. (Aug. 5, 2003).

<sup>187</sup> A cadet is twice given the opportunity to request Immediate Honor Probation during the honor process: when the respondent is served with the official Letter of Notification that the honor process is commencing based on an alleged violation, and immediately following a finding of violation by the Cadet Sanctions Recommendation Panel. The Request for Immediate Probation does not guarantee the Commandant will elect to retain the respondent. See Honor Code Reference Handbook § 2.6.3 and § 2.6.3.1 at 31.

<sup>188</sup> Interview by Panel Staff with Cadet Honor Committee Representatives in Colorado Springs, Colo. (Aug. 5, 2003).

<sup>189</sup> According to the 2001 *Carns Report*, 60% of cadets reject the Honor System's presumptive sanction of disenrollment. Cadets believe punishments should better fit the crime, the system of punishments is too excessive, there should be a "difference in punishments made for offenses by different classes," and that honor offenses occur on a graduated scale of severity. Almost 70% of cadets would tolerate or possibly tolerate honor violations "depending on the severity of the violation" and 78% would continue to tolerate violations as long as the presumptive sanction of disenrollment is in place. *Carns Report* (Aug. 2001).

<sup>190</sup> E-mail from Colonel Charles J. Yoos, II, USAF (Ret.), to Panel Staff (July 28, 2003).

<sup>191</sup> CHARLES YOOS, *BLESSE MON COEUR D'UNE LANGUEUR MONOTONE* (Undated).

<sup>192</sup> Interview by Panel Staff with Cadets in Colorado Springs, Colo. (Aug. 1-5, 2003).

disenrollment remain the presumptive sanction for an Honor Code violation. The cadets explained that the Honor Code should not be weakened and were adamant those committing a severe honor violation are not welcome at the Academy, nor are they wanted in the Air Force.

These cadets distinguished toleration, "allowing suspected Honor Code violations to go uncorrected"<sup>193</sup> from condonation, "allowing a regulations violation to go unreported."<sup>194</sup> The Panel agrees that such a distinction should be drawn. The Academy's Honor System is intended to focus on the behavior that it specifically prohibits. It is not intended to encompass the broader "honorable living" recommended by the "spirit of the code."

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*To live by the "spirit of the code," a cadet is expected to exceed the minimum standard and show integrity in all of his or her actions.*

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To live by the "spirit of the code," a cadet is expected to exceed the minimum standard and show integrity in all of his or her actions. Adherence to the spirit of the Code requires a cadet to go beyond the four negative commands of the Code (lying, stealing, cheating and tolerating) and do the "right thing" at all times, despite adverse pressures.<sup>195</sup> Thus, cadets can behave "dishonorably" without lying, stealing, cheating or tolerating someone who does.

Regular Academy disciplinary channels deal with such other "dishonorable" behavior. Cadets allowing dishonorable behavior that falls outside the prohibitions of the Honor Code are condoning, as opposed to tolerating in contravention of the Honor Code. These acts of condonation seem to have contributed to or permitted an environment in which sexual misconduct could occur at the Academy.

Air Force Academy Cadet Wing Instruction 51-201 provides a conduct standard that parallels the non-toleration clause of the Honor Code. The Academy's official position

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<sup>193</sup> See Honor Representative Training Handbook, USAFA Fourth-Class Honor Fall Lesson 1, at 5-6.

<sup>194</sup> "Condonation" is defined as: "If a cadet overlooks or implies forgiveness of a violation (either at the time of occurrence or afterwards) of directives, policies, or instructions and/or fails to take immediate action, he/she has condoned that misconduct. For example, a cadet is guilty of condonation if he/she knew or should have known that an individual was consuming alcohol underage or knew the cadet driver had consumed alcoholic beverages prior to operating a vehicle while impaired or intoxicated but failed to take action to stop the cadet from operating the vehicle." AFCW Instruction 51-201, Attachment 1.

<sup>195</sup> See Honor Code Reference Handbook, at 2. The Code requires honesty by avoiding lying, stealing, and cheating, and it requires professional responsibility by requiring self-policing and self-reporting.

regarding condonation is that condonation is, at a minimum, in the realm of poor judgment.<sup>196</sup> If a cadet is found to have condoned a violation, the cadet may receive demerits and sanctions up to the amount assigned to the cadet committing the actual violation.<sup>197</sup>

To focus on the distinction between condonation and toleration, the *Agenda for Change* emphasizes a need to live by the spirit of the Code rather than encouraging interpretive efforts by cadets to evade punishment under the letter of the Code. It asserts that shunning cadets reporting others for violations (of the Honor Code or for disciplinary infractions) cannot be tolerated.<sup>198</sup> The *Agenda for Change* also increases the level of and standard for accountability. Cadet commanders will be responsible for the actions of their subordinates. Upper class cadets aware of or observing criminal activity will be held accountable if they fail to take charge of the situation and exercise their leadership responsibilities.<sup>199</sup> Specifically targeting responsibility in all reported cases of sexual assault, the senior ranking cadet aware of or observing an infraction committed by a lower-class cadet will now be held responsible and accountable.<sup>200</sup> The Panel supports these changes in accountability standards.

## 2. Center for Character Development<sup>201</sup>

General Hosmer commissioned the Center for Character Development ("CCD") in 1993 to assess the character makeup of cadets and develop education and training programs to improve the overall character of the cadet population.<sup>202</sup> The CCD's present mission is to facilitate character development programs and activities throughout all aspects of the Academy

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<sup>196</sup> See AFCW Instruction 51-201 Chapter 3.2.6.3: Incidents of condonation are evaluated on a graduated scale of severity based on at least three factors: 1) whether the cadet knew the violation would take place before it happened and did he/she take reasonable measures to prevent it from happening; 2) if the cadet did not know in advance, did he/she take active measures to halt the violation(s) while they were in progress; and 3) if the cadet learned about the violation after the fact, it is not unreasonable to expect an officer candidate to inform the violator that he/she should report themselves to their chain-of-command in a reasonable amount of time (for example 24 hours) or they will do it instead.

<sup>197</sup> *Id.*

<sup>198</sup> See *Agenda for Change*, at 6.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> The Air Force Chief of Staff indicated a desire to change the name of the current center to the "Center for Leadership and Character Development." The recommendations which follow regarding the current Center apply equally to any changes contemplated by the Air Force. Statement of General John P. Jumper, USAF, to the Panel in Arlington, Va. (July 31, 2003).

<sup>202</sup> *Working Group Report*, at 11.

experience. The CCD's objective is to graduate officers with forthright integrity and who voluntarily decide the right thing to do and do it.<sup>293</sup>

In furtherance of its missions, the CCD is divided into four divisions: Honor, Human Relations, Character and Leadership Development and Excellence.

The Honor Division provides Honor Code education instruction equivalent to one academic course throughout the cadets' four years at the Academy. In the first two years, this instruction focuses on understanding and living under the Code. In the final two years, it focuses on helping others live under the Code. The Code is the foundation upon which a cadet builds a personal concept of professional ethics and a minimum standard of integrity, and demands complete integrity in word and deed.

The Human Relations Division focuses on programs that encourage respect for human dignity, and is designed to develop officers equally valuing individuals of different races, national origins, religions, gender and cultural backgrounds.<sup>294</sup> The programs involve classroom instruction and activity-based exercises for Third- and Fourth-Class cadets, an experimental on-site program for Second-Class cadets,<sup>295</sup> and participation in a Character Capstone program for graduating First-Class cadets.<sup>296</sup>

The Character and Leadership Division organizes symposiums, operates an adventure-based learning program to encourage character development and conducts seminars, including various Academy Character Enrichment Seminars ("ACES"), which provide an opportunity for members of the Academy community to consider their role in creating the best possible

<sup>293</sup> Center for Character Development Fact Sheet, *available at* <http://www.usafa.af.mil/pa/factsheets/characte.htm>.

<sup>294</sup> Human Relations Responsibility, *available at* <http://www.usafa.af.mil/wing/34cwc/cwcr/cwcridx.htm>: "I will show respect for and honor all people regardless of their race, religion, gender, national origin, color, or status. It is my responsibility to counsel my fellow cadets on any behavior that I believe adversely affects the positive human relations environment that is guaranteed to every person in the United States Air Force."

<sup>295</sup> Second-Class cadets attend a 5-hour on-site workshop, called "Respect and Responsibility Workshops," designed to develop an understanding and appreciation of others leadership behaviors, facilitate communication skills and challenge any existing biases.

<sup>296</sup> Human Relations Division homepage, *available at* <http://www.usafa.af.mil/wing/34cwc/cwcr/cwcridx.htm>. The Human Relations division was also formerly responsible for conducting cadet Social Climate Surveys (discussed in further detail in Part V.A.2), which provide statistical analysis of trends and findings regarding cadet climate, frequency and tolerance of sexual harassment, and incidents of sexual assault to the Commandant of Cadets and the Character Development Committee. *See also Working Group Report*, at 153-154. Following the *Agenda for Change*, the Department for Behavioral Science and Leadership is now responsible for the social climate surveys.

environment for cadets.<sup>207</sup> The Capstone ACES program permits First-Class cadets to reflect on the growth of their own moral character and highlights the major character lessons provided by all aspects of the cadet experience. The Eagle ACES program uses Hollywood movies to teach leadership and personal evaluation skills to Third- and Fourth-Class cadets. The Character and Leadership Division also sponsors a Professional Mentorship Program which provides flexible guidance to facilitate the development of strong mentoring relationships.

Lastly, the Excellence Division provides cadets opportunities for practical application of their character and leadership education through various programs. The National Character and Leadership Symposium brings together distinguished scholars, armed forces leaders, corporate presidents and others to explore various dimensions of character and leadership. During the 2002-2003 academic year, 48 speakers attended.<sup>208</sup> Furthermore, The Falcon Heritage Forum, held twice a year, creates opportunities for cadets to interact on a personal level with highly distinguished military veterans,<sup>209</sup> including representatives from each branch of military service, numerous Medal of Honor recipients, Tuskegee Airmen and many former prisoners of war from each war or conflict since World War II.<sup>210</sup> The Excellence Division also sponsors Cadet Service Learning, a cadet-led program enabling cadets to give back to the local community by volunteering for community service (including Habitat for Humanity and Big Brothers/Big Sisters),<sup>211</sup> and presents an Air Force Core Values lesson to the Fourth-Class cadets during BCT.

The Panel recognizes that good character values need to be incorporated into the daily lives of cadets, and suggests that cadet character education should expand beyond PowerPoint presentations and lectures to encompass an interactive learning process. While the CCD offers several programs related to character development, none is a prerequisite for graduation or commissioning.<sup>212</sup>

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<sup>207</sup> Character and Leadership Division homepage, *available at* <http://www.usafa.af.mil/wing/34cwc/cwcd/cwcdidx.htm>.

<sup>208</sup> National Character and Leadership Symposium Fact Sheet, *available at* <http://www.usafa.af.mil/wing/34cwc/cwcd/>. Speakers included, among other military heroes, noted authors, and scholars, Michael Josephson of the Josephson Institute of Ethics; Brigadier General Charles Baldwin, USAF, Deputy Chief of the Chaplain Service; and Dr. Albert Pierce, Director of the Character Center at the U.S. Naval Academy.

<sup>209</sup> In fall 2001, the Superintendent directed that the Falcon Heritage Forum include a veteran for each of the 36 squadrons, with 3 cadets per squadron assigned to each veteran.

<sup>210</sup> Excellence Division homepage, *available at* <http://www.usafa.af.mil/wing/34cwc/cwcc>.

<sup>211</sup> Cadet Service Learning Program Fact Sheet, *available at* <http://www.usafa.af.mil/pa/factsheets/characte.htm>.

<sup>212</sup> *Working Group Report*, at vi and 33.

The Panel takes this opportunity to note the important role of the Academy's faculty in promoting character values in its cadets. The Panel believes that faculty members have a critical relationship with and a unique role to play in the daily lives of cadets, particularly throughout the academic year. The Academy's faculty interacts more frequently with cadets and therefore may help shape attitudes and build character. The Panel encourages the faculty to work with Academy leadership as cadets move forward in the environment fostered by the *Agenda for Change*.

Character education is critical to the development of cadets who will live honorably, and to instilling in them an understanding of responsible leadership. Accordingly, the Panel recommends that CCD education instruction be mandatory for all cadets. The Panel further recommends the cadet curriculum require completion of at least one course per year that emphasizes character values, for which cadets shall receive a grade and academic credit.

## C. Cadet Training

A significant organizational aspect of any military academy, which differentiates it from the purely academic focus of a civilian university, is its military training component. At the Academy, this training begins with Basic Cadet Training ("BCT"), conducted under the umbrella of a training structure known as the "Fourth-Class System." With regard to sexual assaults, the training also includes various forms of prevention and awareness training. The following sections specifically concentrate on this training and the manner, if any, in which it contributed to the climate for women, an atmosphere of fear of retribution for reporting sexual misconduct, or the circumstances that resulted in sexual misconduct.

### 1. Fourth-Class System

New cadets are organized in what is commonly referred to as the "Fourth-Class System." Freshmen are known as Cadets Fourth-Class. The rest of the cadets are considered upperclassmen and are divided by class as well. Sophomores are referred to as Cadets Third-Class, juniors are Cadets Second-Class and seniors are Cadets First-Class. The purpose of the Fourth-Class System is to place new cadets into an environment in which their intellect and resources are tested under continuous stress to learn how to perform with competing demands. The Panel recognizes that any system in which people are placed in a position of power over others has the potential for abuse. Accordingly, the Panel concurs with the *Working Group Report* finding that the cadet authority structure establishes a disparity of power that may make

subordinate cadets, particularly female Fourth-Class cadets, more vulnerable to upper class male cadets who might abuse their authority.”<sup>213</sup>

In late 1992, the GAO reviewed all of the Service Academies’ Fourth-Class Systems and their relationship to one form of abuse of power: hazing. It found that internal investigations and major overhauls of the Fourth-Class System at West Point in 1990 and of the Plebe System at the Naval Academy from 1990-1992 resulted in a significant drop in hazing. Because the Air Force Academy had not conducted a similar internal review and seen similar drops in hazing, the GAO recommended that:

*[T]he Secretary of Defense ensure that the Air Force Academy conduct a thorough assessment of its fourth class system . . . . Specific attention should be paid to clarifying the goals of the indoctrination system, articulating specific developmental roles for all four classes, eliminating negative leadership techniques, and eliminating or reducing those elements of the traditional fourth class indoctrination system that are prone to abuse or have little relationship to the development of future officers.”<sup>214</sup>*

The Department of Defense rejected the GAO’s recommendation. “The DOD did not agree that the Air Force Academy needed to conduct a review of its fourth class indoctrination system similar in scope to those conducted by other academies. DOD stated that it would ensure that adequate oversight of the academies was exercised . . . .”<sup>215</sup> Yet, many of the same conditions that foster hazing also foster the abuse of power by upperclassmen against freshmen women.

The potential for abuse of power at the Academy exists due to many factors, including close living conditions, the Academy and the cadet area’s remote location from the rest of the base population and facilities, the controlled and disciplined environment in which all cadets (especially Fourth-Class cadets) are expected to live, the supervisory role upperclassmen have over Fourth-Class cadets, and the mission of transitioning cadets from civilian life to a military environment that emphasizes teamwork but is based upon rank structure.”<sup>216</sup>

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<sup>213</sup> *Id.* at vi.

<sup>214</sup> GAO Report, *DOD Service Academies: More Changes Needed to Eliminate Hazing* (Nov. 1992), at 81.

<sup>215</sup> *Id.* at 83.

<sup>216</sup> Of the forty investigated cadet-on-cadet allegations examined by the Working Group, 53% involved Fourth-Class cadet victims, while Fourth-Class cadets make up only 29% of the cadet population. *Working Group Report*, at 73-74. The Working Group also found that of a total of sixty-one (61)

If implemented properly, however, the Fourth-Class System should not include abuse of power, hazing or any other forms of maltreatment. Instead, if conducted with the appropriate oversight, it will provide excellent leadership opportunities for the upper classes and shall be an effective system to instill discipline, teamwork and respect for each other and authority. The Academy and its new leadership have to be given an opportunity to implement changes in the system and the Air Force must establish benchmarks on judging success.

The Panel does not believe that merely checking off the items of the *Agenda for Change* will be an effective solution. Attainable and measurable goals should be established in an environment that moves away from discipline for discipline's sake and instead strives to find the character development or military training benefit presented by each situation.<sup>217</sup> The Academy appears to be making progress toward such an end by implementing an incentive program in which Fourth-Class cadets shall earn their "props and wings." In the past, all Fourth-Class cadets received this distinction at the same time, following recognition in the spring. Now, Fourth-Class cadets shall earn them as a squadron at different times throughout the year, through a system that evaluates their military and academic performance.

Another common criticism of the Fourth-Class System is that the nature of BCT tends to instill or foster an ethic that promotes loyalty to peers. Beginning at BCT, cadets are placed in situations which tend to unify them in an effort to accomplish a particular goal or mission or to survive a shared experience. Over time, and perhaps not even as a conscious decision, cadets grow to rely on, trust, and need each other over all else including, at times, any loyalty to principle or discipline at the institution.

Moreover, for some cadets, the fear of retribution, reprimands and shunning prevents reporting of abuses. In the past, when Fourth-Class cadets arrived at the Academy, they were immediately indoctrinated into a harsh discipline system that involved constant yelling. This type of discipline continued throughout BCT and most of the Fourth-Class year until recognition in the spring. While at BCT, cadets were challenged physically, emotionally and mentally in an effort that some believe is intended to "break their spirit" and help them "adjust" to the military.<sup>218</sup>

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investigated allegations, forty-six (46) involved cadet victims, twenty-one (21) of whom (or 46%) were Fourth-Class cadets. See *Working Group Report*, at 70-75.

<sup>217</sup> For a discussion of additional oversight mechanisms, see Section IV.

<sup>218</sup> Letter from Brigadier General Robert F. McDermott, USAF (Ret.), to the Panel (July 17, 2003).

The Fourth-Class System is actually intended to eliminate factors such as economic status, background and race and gender issues while teaching the value of teamwork, dedication to the mission and putting the unit above oneself. However, a consequence of such treatment is often a lowered self-esteem and a sense that to survive the environment one must wholly rely on one's peers to help make it through this shared experience.

Portions of the *Agenda for Change* have scaled back much of the initial indoctrination so that BCT now emphasizes fair treatment and mutual respect. The focus of the arrival of Fourth-Class cadets is now built upon treating them with respect and dignity and in turn, earning their respect. To that end, the Academy developed a four-day orientation program geared toward a more respectful transition from civilian to military life. The content of the orientation includes more of a focus on the overall behavior expected of cadets and also provides material on sexual assaults.<sup>219</sup>

Proposals in the *Agenda for Change* that improve the quality of the AOCs, empower the AOCs to deal with minor disciplinary infractions and provide greater presence of the AOCs and the MTLs in the dormitories are an excellent start to implementing the proper active duty oversight of cadets training cadets within the Fourth-Class System. The Panel is of the opinion that the new educational requirements for AOCs and MTLs are a positive step, but continuing education of AOCs and MTLs should not cease after their initial training. They must regularly receive education and training in mentoring cadets, developing cadet leadership, and properly exercising their oversight role and authority.

Changes such as those described in the preceding paragraphs are crucial to ensuring that power is not abused. The Academy must continue to focus on establishing and enforcing standards of acceptable behavior and proper treatment of others. Overall, with the proper controls, training and oversight, BCT can effectively bond cadets as team members while at the same time establishing that cadets are not only part of the immediate "team" of cadet peers, but are part of larger teams to which their loyalties must ultimately focus. By establishing on arrival day that the Academy is a proud and responsible institution, one the current cadets are proud of, and

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*The Academy must continue to focus on establishing and enforcing standards of acceptable behavior and proper treatment of others.*

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<sup>219</sup> For details on our assessment of the training, see Part V.C.2.

one that is excited to have the new cadets join its ranks, the Academy can set a tone to be followed throughout BCT and a cadet's entire four-year experience.

## 2. *Prevention & Awareness Training*

The *Working Group Report* concluded that the sexual assault prevention and awareness training was ineffective for the following reasons:

- (1) the definition of sexual assault used in Academy Instruction 51-201 was confusing, not in compliance with the law associated with sexual assaults and inconsistent with the definition used throughout the Air Force;
- (2) the Fourth-Class cadets who received the training during BCT were too tired to process the information;
- (3) the self-defense training given to Fourth-Class women often occurred too late in the semester to be effective; and
- (4) the training had little focus on the moral, leadership or character component of deterrence.<sup>220</sup>

In response to these deficiencies, the *Working Group Report* recommended increasing the frequency and effectiveness of sexual assault deterrence training, emphasizing small groups, cadet participation, and a focus on character, including the ethical use of power.<sup>221</sup> The *Agenda for Change* implements this recommendation by mandating that the Academy apply definitions of "sexual assault" consistent with standard Air Force-wide definitions and ensuring all Academy instructions, training materials and guidance reflect Air Force-wide definitions.<sup>222</sup> In addition, the *Agenda for Change* requires that BCT emphasize fair treatment and mutual respect, that the orientation provide substantial material on sexual assault prevention and overall behavior expected of cadets, and that the syllabus include guidelines on workplace behavior, as well as demeanor and consequences.

<sup>220</sup> *Working Group Report*, at 26-30.

<sup>221</sup> *Working Group Report*, at viii, bullet 3.

<sup>222</sup> The Air Force does not have a definition of "sexual assault." Instead, as in the other Services, the Air Force applies definitions of offenses as listed in the Uniform Code of Military Justice ("UCMJ"), some of which are offenses of a sexual nature...e.g., rape, sodomy, indecent assault, and assault with the intent to commit rape or sodomy. According to the *Agenda for Change* update, the Academy will use the definitions consistent with the UCMJ. Video Teleconference *Agenda for Change* Status Briefing by Colonel Debra D. Gray, USAF, Vice Commandant, USAFA, with Panel Staff (July 24, 2003).

The Academy provided the Panel with a binder containing four new training session presentations<sup>223</sup> given during the initial phases of BCT. Our review of the BCT schedule for the class of 2007<sup>224</sup> indicates an attempt to address the *Working Group Report* concerns of the timing of the training by providing two-and-one-half hours of briefings on day one of BCT. Unfortunately, this may be merely form over substance, as all but one class was conducted at 7:00-9:30 p.m., following twelve hours of in-processing. This timing hardly seems an effective method for overcoming the deficiencies noted in the *Working Group Report*. Although the Panel appreciates that the demands on the time of new cadets are significant, we recommend reassessing the training calendar to place this training at a time of day in which cadets will be most receptive to the training session.

A review of the content of the training leaves some questions regarding its effectiveness as well. Some of the Panel's specific concerns include:

The Cadet Counseling Center briefing is an orientation to the services the center provides. A bulleted point on one slide of the orientation presentation states that the Sexual Assault Services section of the Cadet Counseling Center "Administers the Victim Witness and Assistance Program." This statement is inconsistent with Air Force Instructions and, in past practice, served as a main source of lack of communication between counselors and the Staff Judge Advocate's office, lending to confusion of responsibilities and lack of communication with victims. This slide should be immediately corrected so that everyone receives proper information regarding the process.

The Gender Roles and Bias Class helps cadets consider the internal sources of some of their biases, introduces them to the Air Force standards and presents sample scenarios for discussion; however, the prompting questions associated with the scenarios seem less than desirable or informative. For example, one of the scenarios discusses verbal sexual harassment of a female cadet by two higher-ranking male cadets. Instead of asking prompting questions such as "What should this female cadet do in this situation?" or "Why is this behavior inappropriate?" the prompting questions are "How would this interaction affect her development?" and "How would this interaction affect future behaviors of males?" The former questions would permit education on possible courses of action for the female cadet, whereas the latter questions do not seem to lead to any educational purpose. Although the

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<sup>223</sup> The PowerPoint presentations consist of an overview briefing by the Commandant of Cadets; a Sexual Assault Awareness and Prevention Class by the Chief, Sexual Assault Services and the Victim Advocate Program Coordinator; an introduction to the Academy Counseling Center by a member of the 34<sup>th</sup> Training Wing Academy Counseling Center Staff and a Gender Roles and Gender Bias Class (presenter unknown).

<sup>224</sup> See USAFA Basic Cadet Training ("BCT") training schedule.

training may make cadets more aware of the impacts of their comments or behavior, the Panel is concerned that the training still does not give the cadets the proper tools or focus on how to handle such situations, how to respond to the types of scenarios presented, or how and when such incidents should be reported.

The additional training provided to the Fourth-Class cadets at the beginning of transition week consists of a series of large audience presentations. These briefings were informative but, except for the one on sexually transmitted diseases, difficult for the cadets to hear or remain awake to absorb.

The Panel recommends that the Academy focus on providing better training to the trainers of these classes including enlisting the aid of faculty members who are well-skilled in group presentation techniques that are effective and energize the cadets, developing small group training sessions which will be more effective than large audience presentations, developing training sessions that educate the students on the reporting process and AFOSI investigatory practices and procedures, and establishing a review process for training session materials that includes the use of the Academy Response Team and cadet cadre or some other multi-disciplinary group of experts.

## VI. INTERVENTION AND RESPONSE TO SEXUAL ASSAULT

The first part of this report addresses measures to deter and prevent sexual assault by ensuring an actively engaged chain of command with external oversight and by improving the organizational culture and climate. This section discusses policies and procedures for responding to allegations of sexual assault.<sup>226</sup> This section also discusses policies regarding reporting incidents of sexual assault, victim support and intervention, and law enforcement responsibilities. The Panel places particular emphasis on revising or eliminating policies that discourage victims of sexual assault from coming forward to report these crimes.

### A. Encouraging Reporting

#### 1. Sexual Assault Reporting System: Confidentiality

Beginning in 1993, the Academy sexual assault reporting program and victim confidentiality program struggled to balance the maintenance of good order and discipline with a reporting process that affords victims of sexual assault their privacy, safety, and mental and emotional well-being. The Academy's responsibility to develop the nation's future military leaders makes achieving that balance uniquely challenging. Within the Academy environment, the dilemma is how best to ensure that those cadets victimized by sexual assault receive all necessary support and treatment while, guaranteeing that offenders are held appropriately accountable and that those cadets who are unworthy of leadership roles in the nation's defense are not commissioned as military officers.

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<sup>226</sup> The Working Group concluded that the Academy-unique definition of "sexual assault" was susceptible to misinterpretation, may have caused confusion regarding issues of consent, and may have created incorrect perceptions of the law and unrealistic expectations in victims. *Working Group Report*, at iv. The Academy has since revised its definition of "sexual assault" in accordance with the UCMJ: "Sexual Assault refers to any of several offenses of a sexual nature, committed without the lawful consent of the victim, that are punishable as crimes under the Uniform Code of Military Justice. The offenses included within the term 'sexual assault' include rape and carnal knowledge (Article 120, UCMJ), forcible sodomy (Article 125), and assault with intent to commit rape or sodomy, indecent assault, and indecent acts or liberties with a child (Article 134), or an attempt to commit any of these offenses." *Commander's Guidance 05-8* (May 27, 2003).

On the issues of victim confidentiality and sexual assault reporting, the pendulum's swing has reacted to extremes under the spotlight of high-profile events, going from a position of total confidentiality and victim control over incident reporting to the new Academy policy which eliminates confidentiality and mandates reporting. Neither extreme is satisfactory. The continuing challenge is to reach an appropriate balancing point, while remaining consistent with the policies, practices and procedures of the Air Force at large.

In 1993, in the aftermath of a sexual assault incident at the Academy, General Hosmer spoke with an assembly of female cadets who told him of a number of unreported incidents of sexual assault. The cadets also expressed distrust in the Academy administration that resulted from efforts by the Commandant of Cadets to use victim counseling records to support administrative actions against cadet offenders. The cadets considered this a breach of trust leading to a loss of confidence in the administration. General Hosmer became convinced that victim confidentiality was essential to ensuring that victims come forward to report such incidents and, thereby, receive necessary medical treatment and counseling. To resolve the problem, General Hosmer instituted a program that utilized the services of a Cadet Counseling Center reorganized under the Dean of Faculty, a victim-controlled reporting system, and an Academy-unique policy of victim confidentiality.

The premise justifying the Academy's confidentiality initiative was that confidential reporting, along with professional support and counseling, would increase the likelihood that victims would eventually formally report. However, it had the potential of preventing command and law enforcement authorities from learning of serious criminal conduct. It also could interfere with the collection of evidence required for the success of any future prosecution. This problem occurred at the Academy and was exacerbated over time, as it appears that those individuals responsible for receiving confidential victim reports may not have fully satisfied their responsibility to encourage victims to formally report assaults. Instead, some counselors may actually have discouraged victims from reporting.<sup>226</sup>

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<sup>226</sup> *Working Group Report*, at 115. One cadet, who had served as a Cadets Advocating Sexual Integrity and Education ("CASIE") volunteer for about three years, stated that he told victims the investigation is an intrusive process and "OSI doesn't work for you. They will do what's in the best interests of the Air Force." Additionally, the Victim Advocate Coordinator has stated that "OSI is not there to nurture you, it's not there to be your friend." *Id.*

As a result of the problems identified with the Academy's unique confidential sexual assault reporting system, the *Agenda for Change* effectively eliminated confidential reporting and directed that all incidents be reported to command and law enforcement authorities.<sup>227</sup>

The Panel finds the problems associated with the former Academy policy of confidential reporting were not necessarily caused by allowing for privileged communications, but were the result of a confidentiality policy which, over time, was poorly implemented and lacked responsible governance and oversight. The Panel further finds that the *Agenda for Change* reaction which eliminated confidential reporting swings the pendulum too far in the opposite direction and creates a significant risk that victims will not come forward at all and thus lose the benefits afforded by professional counseling.

The *Agenda for Change* policy overlooks an established form of privileged communication that is currently available throughout the Armed Forces and could benefit cadet victims: the psychotherapist-patient privilege. Military chaplains also play an important role in responding to the needs of individuals facing a personal crisis, and communications to clergy are privileged if they are made either as a formal act of religion or as a matter of conscience.<sup>228</sup> However, to be most effective, chaplains must first receive training specific to responding to the needs of sexual assault victims. When the proper resources and services are as readily available for Academy cadets as they are for Air Force members in general, Academy cadets should not forfeit the confidentiality that the law provides.

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*The Agenda for Change  
policy overlooks an  
established form of  
privileged communication.*

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It is important to note that during the period of 1993 to 1999, when the Academy established and employed its confidential reporting policy, the psychotherapist-patient privilege was not recognized under the Military Rules of Evidence and was not available within the Armed Forces. During that period, communications with a clergyman, lawyer or spouse were recognized as privileged, but a doctor-patient privilege (including mental health counseling) within the military was expressly excluded.<sup>229</sup> Consequently, there was no authority

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<sup>227</sup> *Agenda for Change*, at 5. "All allegations of sexual assault will be reported to the officer chain of command immediately."

<sup>228</sup> Mil. R. Evid. 503.

<sup>229</sup> A person could not claim a privilege with respect to any matter except as required by or provided for in the Constitution of the United States as to members of the Armed Forces, an Act of Congress applicable to courts-martial, the Military Rules of Evidence, or the principles of common law generally recognized in the trial of criminal cases in the United States district courts insofar as the application of such

beyond Academy-based policy that established confidentiality or privileged communications between a cadet victim and a counselor. Today, consistent with Air Force practice, a confidentiality alternative is available to the Academy by virtue of the psychotherapist-patient privilege established in 1999 by Presidential Executive Order 13140<sup>230</sup> and implemented in Military Rule of Evidence 513.<sup>231</sup>

The psychotherapist-patient privilege is well-suited for the situation at the Academy, where there is a need to provide professional mental and emotional counseling to victims struggling with the experience of a criminal assault, but also making allowance for limited circumstances where disclosure may be required under specifically enumerated considerations. To obtain the benefit of the privilege, it is required that the patient or victim consult with a trained professional who is qualified to address their mental and emotional needs. As an established military privilege applicable throughout the Armed Forces, this avenue of confidentiality for Academy cadet victims of sexual assault is not dependent upon a unique Academy or Air Force policy decision. The privileged communication exists as long as the qualifications of the counselors and the circumstances of the communication meet the rule's requirements.

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principles in trials by courts-martial is practicable and not contrary to or inconsistent with the UCMJ, these rules, or the Manual for Courts-Martial. Mil. R. Evid. 501, Manual for Courts-Martial, United States, 1984. "Notwithstanding any other provision of these rules, information not otherwise privileged does not become privileged on the basis that it was acquired by a medical officer or civilian physician in a professional capacity." Mil. R. Evid. 501(d).

<sup>230</sup> Exec. Order No. 13140, "1999 Amendments to the Manual for Courts-Martial, United States" (Oct. 6, 1999). The military's initiative to codify a psychotherapist-patient privilege stemmed from an Air Force court-martial, at Elmendorf Air Force Base, Alaska in 1996. *U.S. v. Underwood*, 47 M.J. 805 (A.F.Ct. Crim. App., 1997). In the *Underwood* case, the accused was charged with the rape of a 20-year-old. While the case was being investigated, the victim sought psychiatric counseling at the Air Force hospital and was seen by an Air Force psychiatrist. When court-martial charges were initiated, the accused's defense counsel requested copies of the psychiatrist's notes of the counseling sessions with the victim. The victim and victim's mother strenuously objected to this invasion of the victim's privacy and confidentiality, but at the time there was no doctor-patient or other privilege that applied. The Department of Defense drafted and recommended establishment of a psychotherapist-patient privilege following extensive media coverage and congressional interest in the case, and the United States Supreme Court decision in *Jaffee v. Redmond*, 518 U.S. 1, 116 S.Ct. 1923, 135 L.Ed.2d 337 (1996). Military Rule of Evidence 513, "Psychotherapist-Patient Privilege," became effective throughout the Armed Forces on November 1, 1999.

<sup>231</sup> Mil. R. Evid. 513, at Part III, 33-34, Manual for Courts-Martial, United States (2002 Edition). The rule provides that a "patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and the psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition." Mil. R. Evid. 513(a).

When professionals who staff the Cadet Counseling Center meet the definition of "psychotherapist" (e.g., psychiatrist, clinical psychologist, licensed clinical social worker, or person credentialed to provide such services from any military health care facility),<sup>232</sup> the privilege will apply and confidentiality will be extended to the person seeking assistance. Based on current and projected Academy staffing, such professionals should be available to counsel and treat cadets.<sup>233</sup> The privileged communication also extends to "assistants to a psychotherapist," who are defined as persons who are directed by or assigned to assist a psychotherapist in providing professional services to the patient.<sup>234</sup> The patient, the psychotherapist, or assistant to the psychotherapist who received the communication, or a trial counsel (prosecutor) or defense counsel may assert the privilege on behalf of the patient. The privilege extends to the testimony of the psychotherapist or assistant to the psychotherapist and patient records that pertain to communications made for the purpose of diagnosis or treatment of the patient's mental or emotional condition.<sup>235</sup> Consultations with psychotherapists during the investigative phase of the Uniform Code of Military Justice ("UCMJ") sexual assault offense fall within the protections contemplated by the privilege. The privilege and confidentiality apply throughout any military justice disciplinary action that results and, by Air Force Instruction 51-602, also apply to administrative proceedings before boards of officers.<sup>236</sup>

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<sup>232</sup> Mil. R. Evid. 513(b)(2).

<sup>233</sup> The Cadet Counseling Center will be staffed by two licensed clinical psychologists, one licensed professional counselor, one program manager for the Victim Advocate Program (a registered nurse practitioner), one Program Manager for the CASIE program, and a counseling services technician. Two additional licensed clinical psychologists will join the staff in October 2003. Statement of the Director of the Commander's Action Group, 34<sup>th</sup> Training Wing. In addition, current staffing at the Life Skills Support Center consists of a board certified adult psychiatrist, who provides medication management to cadets and active duty members, a licensed clinical psychologist, who provides services to active duty members and cadets as well as children of active duty members, and three licensed clinical social workers.

<sup>234</sup> Mil. R. Evid. 513(b)(3).

<sup>235</sup> Mil. R. Evid. 513(b)(5).

<sup>236</sup> "Rules of Evidence: 2.1.5. Apply the Military Rules of Evidence on privileged communications." Air Force Instruction 51-602, "Boards of Officers," (Mar. 2, 1994). Board of Officer proceedings pursuant to Air Force Instruction 51-602 apply to various categories of cadet disenrollments and separation proceedings. Air Force Instruction 36-2020, "Disenrollment of United States Air Force Academy Cadets," (Apr. 22, 1999).

Balancing the public interest in the disclosure of information in certain circumstances, the rule establishes several exceptions to the privileged communication. The psychotherapist is permitted to disclose privileged information when the psychotherapist believes the patient's mental or emotional condition makes the patient a danger to any person, including the patient, and when necessary to ensure the safety and security of others.<sup>297</sup> Each case presents its own unique set of facts and circumstances for the professionally-trained psychotherapist to assess, along with the victim's initial preference about reporting the incident, in determining whether an exception to the privileged communication applies and reporting is required under the rule. When the psychotherapist believes that the perpetrator of the sexual assault is a sexual predator, or when the victim needs more extensive psychiatric treatment to avoid being a danger to herself, the exceptions to privileged communication serve both the public interest and the need for good order and discipline.

The Panel recommends that the Air Force establish a policy that achieves a better balance of interests and properly employs psychotherapist-patient counseling, and its associated privilege, for the benefit of cadet victims.

The Panel recommends that the Academy's policy for sexual assault reporting clearly recognize the applicability of the psychotherapist-patient privilege and that the Academy staff the Cadet Counseling Center with at least one Victim Advocate provider who meets the legal definition of "psychotherapist." Further, the Panel recommends that the individual assigned to serve as the initial point of reporting whether by "hotline" or in person, be a qualified psychotherapist who has completed a recognized rape crisis certification program. Optimally, the Victim Advocate psychotherapist should be in charge of the sexual assault program within the Cadet Counseling Center and will provide direction and supervision to those assistants supporting the assigned psychotherapists.

It is critical that the Victim Advocate psychotherapist and those working for her are skilled at counseling and helping victims to understand and appreciate the significance of their choices and, more importantly, understand how their decisions might affect the ability of the Academy and law enforcement to bring the offender to justice. Giving victims choices helps them regain a sense of control over their lives and promotes the healing process. Helping victims understand the consequences of their choices also increases opportunities for making the right choices, thereby further helping to encourage the reporting of these crimes. It is

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<sup>297</sup> Mil. R. Evid. 513(d).

imperative that the Victim Advocate psychotherapist, consistent with the rule of confidentiality, inform the chain of command about issues and problems<sup>238</sup> and actively work to solve identified problems.<sup>239</sup>

The Panel recognizes that the Academy and cadets favorably view the use of cadets to assist in the CASIE program. However, there are two items of concern regarding the CASIE program that need to be specifically addressed: first, reports of sexual assault made to CASIE representatives are not confidential; and second, CASIE representatives lack the necessary qualifications to provide professional-level counseling to fellow cadets.

Regarding the first issue, sexual assault allegations made to CASIE representatives are not confidential because CASIE cadets are not currently qualified to receive privileged communications. To the extent that CASIE representatives continue to be used as sexual assault victim counselors and intended “confidantes,” the Academy should take those steps necessary to bring the CASIE representatives under the protective umbrella of the psychotherapist-patient privilege by ensuring that cadets involved in these situations meet the definition of an “assistant to a psychotherapist.”

If the privilege is extended to CASIE cadets, it must be under a program of careful and continuous direction and supervision by the psychotherapist. This helps address the second issue regarding CASIE representatives — lack of qualifications. The psychotherapist supervisor must ensure CASIE cadets do not cross the line from serving as active listeners and resources for the victim to becoming their advocates. Further, CASIE cadets must keep the psychotherapist supervisor advised of all facts and circumstances of the confidentially-reported offense so that the psychotherapist supervisor can evaluate the situation and determine whether any of the recognized exceptions to privileged communications applies. Regardless of whether CASIE cadets are ultimately placed under the psychotherapist-patient privilege umbrella, it is imperative that CASIE representatives are properly trained and consistently supervised.

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<sup>238</sup> Consistent with the privilege, the psychotherapist should report data only when discussing a specific report of sexual assault, until such time as that victim comes forward to make a formal report or waives the privileged communication.

<sup>239</sup> For example, if problems are identified with the manner in which law enforcement handle specific cases, those matters should be addressed and corrective action sought through the law enforcement chain of command and the Academy chain of command, rather than dissuading victims from making reports to law enforcement.

## 2. Other Avenues of Sexual Assault Reporting: The CASIE Program

The CASIE program is a 24-hour, phone-in "hotline" administered by the Sexual Assault Services Branch in the Cadet Counseling Center. The hotline provides an avenue for cadets to report sexual assault; provides current information on procedures, regulations and referrals; encourages victims of sexual assault to utilize available services; and educates the Cadet Wing on the issue of sexual assault. The hotline is a system in which a cell phone is passed between CASIE representatives to the volunteer currently on duty.<sup>240</sup> The CASIE representative receiving the call documents as much information as the caller is willing to volunteer, and provides the information to the CASIE Program Manager. Prior to March 2003, the Vice Commandant was informed when someone called the hotline to report a sexual assault, but was not provided any identifying information.<sup>241</sup> Under the *Agenda for Change*, which effectively eliminates confidential reporting, allegations of sexual assault must be reported to the chain of command.<sup>242</sup>

Currently, in addition to manning the hotline, one or two CASIE representatives are assigned to each of the 36 squadrons at the Academy.<sup>243</sup> The CASIE representatives act as points of contact regarding sexual assault issues for cadets, provide further education on sexual assault topics, and organize Sexual Assault Awareness Month each April.<sup>244</sup> CASIE representatives also aid in rumor control and relay current information within the Cadet Wing. Frequently, cadets directly approach their squadron CASIE representative, or that of another squadron, to discuss issues regarding sexual assault and to seek help or guidance after an assault.

<sup>240</sup> Interview by Working Group with former CASIE Program Manager in Colorado Springs, Colo. (Mar. 14, 2003). Most calls received by the hotline are made days, weeks, or months after an assault. If a cadet calls the hotline within seventy-two hours of an assault, the CASIE representative advises the cadet of the benefits of a rape kit exam, and that a victim advocate is available to escort the cadet to Memorial Hospital to have one performed. Interview by Working Group with CASIE Representative, Cadet in Charge of Sexual Awareness, in Colorado Springs, Colo. (Mar. 11, 2003).

<sup>241</sup> Interview by Working Group with CASIE Representative, Cadet in Charge of Sexual Awareness, in Colorado Springs, Colo. (Mar. 11, 2003).

<sup>242</sup> *Commander's Guidance 05-8* (May 27, 2003).

<sup>243</sup> Interview by Working Group with former CASIE Program Manager in Colorado Springs, Colo. (Mar. 14, 2003).

<sup>244</sup> Sexual Assault Awareness Month (SAAM) focuses on progressive education during a four-year undergraduate program. CASIE representatives present seminars that cadets attend according to class year. Fourth-Class SAAM education focuses on awareness, and includes an annual guest speaker who was a victim of acquaintance rape. Third-Class education focuses on prevention. Second-Class and First-Class education focus on assistance and professionalism, respectively.

The CASIE manager organizes and manages the program's representatives. The Program Manager is a Second Lieutenant recently graduated from the Academy and serving a one-year assignment.<sup>245</sup> The Program Manager reports to the Chief of Sexual Assault Services. CASIE representatives complete required volunteer training<sup>246</sup> and are selected through an application process that assesses a cadet's reasons for interest in the program and qualifications.<sup>247</sup> All participation in the CASIE program is voluntary, and cadets are not evaluated based on their participation.

#### a. Mental Health Services

The Cadet Counseling Center offers individual and group mental health counseling conducted by Air Force medical professionals. Cadets whose mental health needs exceed the capability of the Cadet Counseling Center are referred to the Life Skills Support Center ("LSSC"), located on Academy grounds. LSSC provides mental health services for drug and alcohol treatment, family maltreatment and other general matters as needed.<sup>248</sup> If unable to provide the appropriate mental health services through the Cadet Counseling Center or LSSC, the Academy will pay for counseling with a civilian professional.

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<sup>245</sup> Interview by Working Group with former CASIE Program Manager in Colorado Springs, Colo. (Mar. 14, 2003).

<sup>246</sup> CASIE representatives must attend monthly meetings and, every August, undergo approximately 20 hours of training to retain their status as a CASIE volunteer. AFOSI, Legal, and Sexual Assault Nurse Examiners ("SANE") brief volunteers on how to help a victim of sexual assault, what options are available, how to work the hotline, and how to listen and react to victims. Interview by Working Group with CASIE Representative Cadet in Charge of Sexual Awareness in Colorado Springs, Colo. (Mar. 11, 2003); Statement of CASIE Representative Cadet in Charge of Sexual Awareness. Cadets are also briefed on the services CASIE does not provide, such as diagnosis, counseling, treatment, and transportation. Interview by Working Group with current CASIE Program Manager, in Colorado Springs, Colo. (Mar. 11, 2003).

<sup>247</sup> Applicants on any type of probation are not accepted. Fourth-Class cadets are not permitted to serve as official representatives, but are permitted to attend monthly meetings. Interview by Working Group with former CASIE Program Manager in Colorado Springs, Colo. (Mar. 14, 2003).

<sup>248</sup> The Cadet Counseling Center will be staffed by two licensed clinical psychologists, one licensed professional counselor, one program manager for the Victim Advocate Program (a registered nurse practitioner), one Program Manager for the CASIE program, and a counseling services technician. Two additional licensed clinical psychologists will join the staff in October 2003. E-mail from Colonel Eddy to Panel Staff (Aug. 14, 2003). In addition, current staffing at the Life Skills Support Center consists of a board certified psychiatrist, who provides medication management to cadets and active duty members, a licensed clinical psychologist, who provides services to active duty members and cadets as well as children of active duty members, and three licensed clinical social workers. Interview by Panel Staff with Lieutenant Colonel Christopher J. Luedtke, USAF, Director, Commander's Action Group, 34<sup>th</sup> Training Wing, in Colorado Springs, Colo. (Aug. 4, 2003).

## b. Sexual Assault Programs at Other Service Academies

Although the Panel was not established to evaluate the sexual assault programs at the other Service Academies, the Panel examined some of those programs to make comparisons to the Air Force Academy programs.

The Naval Academy and the West Point both maintain programs of 24-hour telephone access for students to contact in the event of a sexual assault. Each Service Academy also has policies addressing the issue of sexual assault and maintains counseling centers that provide mental health services.

West Point provides non-confidential<sup>249</sup> and confidential<sup>250</sup> options for cadets to report sexual assault, and has two avenues through which cadets have 24-hour telephone access to a trained professional.<sup>251</sup> If a sexual assault occurs, cadets are encouraged to first contact their Tactical Officer<sup>252</sup> ("TAC") who is available 24 hours a day. Allegations made to a TAC are not confidential. Alternatively, cadets may call one of three licensed psychiatrists in the Center for Personal Development<sup>253</sup> ("CPD") monitoring a beeper on a rotating basis. Cadets may call this beeper 24 hours a day to speak with the mental health professional on duty either for immediate assistance or to talk about any issues that may be bothering the cadet. Allegations of sexual assault made to the psychiatrist are confidential;<sup>254</sup> during counseling, however, CPD psychiatrists encourage cadets to report the assault to the proper authorities.

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<sup>249</sup> Non-confidential options that are available include the Cadet Health Clinic, the Inspector General, Staff Judge Advocate, Provost Marshal, Equal Opportunity Office, staff, faculty, sponsors, and athletic coaches.

<sup>250</sup> Confidential options include Community Mental Health, chaplains, and the Center for Personal Development.

<sup>251</sup> Telephone interview by Panel Staff with the Director of Office of Policy, Planning, & Analysis at West Point (Aug. 7, 2003).

<sup>252</sup> Tactical Officers ("TAC") are required to complete a year-long Master's degree program in counseling prior to their assignment. In that program, TACs receive special instruction on sexual assault counseling and legal information specific to victims of sexual assault.

<sup>253</sup> The Center for Personal Development ("CPD") is a counseling and assessment center staffed by Army officers who are trained professional counselors and psychologists. The CPD provides individual and group counseling for cadets in areas including leadership development, personal relationships, decision making, eating and weight management, and academic difficulties. Three licensed psychiatrists, one of whom is a female, currently staff the CPD.

<sup>254</sup> CPD provides monthly trend analysis to the Commandant of Cadets alleging sexual assault, but excludes any identifying information about the cadet involved. This trend data is maintained in confidential files.

Similar to the Air Force and Naval Academies, West Point utilizes cadet representatives positioned within the student body. West Point's Respect Program, located in the Simon Center for Professional Military Ethics, consists of approximately 32 hours of values education spread over a cadet's four years at West Point. The Respect Program Committee includes one junior and one senior cadet from each Company acting as representatives for the Respect Program Committee and providing an additional channel through which cadets may raise concerns and issues. Cadet representatives assist fellow cadets with myriad concerns, but their basic role is to set a good example for fellow cadets and ensure that cadets treat each other with dignity. Information given to the Cadet Respect Program representatives is not confidential, but remains within the Respect Program Committee chain of command.<sup>295</sup> Because Respect Program Committee cadet representatives do not address issues of sexual assault, the cadets do not receive special training regarding victim assistance.

The Naval Academy's Sexual Assault Victim Intervention ("SAVI") Program includes trained student volunteers.<sup>296</sup> The Program is comprised of SAVI Guides and SAVI Advocates, and is the Naval Academy's preferred initial point of contact in cases of sexual assault. Both SAVI Guides and Advocates are accessible to midshipmen twenty-four hours a day. Similar to CASIE representatives, SAVI Guides are midshipmen volunteers interspersed within the student population<sup>297</sup> and trained to assist victims of sexual assault.<sup>298</sup> Information shared with SAVI Guides is, by Naval Academy policy, confidential. However, SAVI Guides are required to inform the SAVI Program Director that an assault has occurred, whether the assault was primary or secondary<sup>299</sup> and other non-identifying information.<sup>300</sup> SAVI Advocates are officers

<sup>295</sup> Telephone interview by Panel Staff with the Director of Office of Policy, Planning, & Analysis at West Point (Aug. 7, 2003).

<sup>296</sup> Telephone interview by Panel Staff with the Program Coordinator for the Sexual Assault Victim Intervention ("SAVI") Program at the Naval Academy (Aug. 8, 2003).

<sup>297</sup> SAVI Guides, assigned one per company, are not permitted "to act as counselors or Sexual Assault Victim Advocates," but "may assist in victim advocacy under the direct supervision of the assigned SAVI Advocate." *COMDTMIDNINST 1752.1A(3)* Midshipman SAVI Guide Program ¶ 4. SAVI Guides are responsible for conducting four training sessions per semester, one for each class. *COMDTMIDNINST 1752.1A(2)* Brigade Sexual Assault Awareness Education ¶ 6 b.(2).

<sup>298</sup> SAVI Guides are required to complete an annual three-day training program and attend monthly meetings.

<sup>299</sup> A primary assault is one that occurred to the midshipman speaking with the SAVI Guide. A secondary assault is one that happened to a friend or acquaintance of the midshipman speaking with the SAVI Guide.

<sup>300</sup> The SAVI Program Coordinator gives this sexual assault data to the Program Director, and it is then passed up the chain of command to the Commandant, and Superintendent.

and enlisted personnel trained to provide counseling for victims of sexual assault.<sup>261</sup> Unlike SAVI Guides, SAVI Advocates are required to report all allegations of sexual assault to the chain of command.<sup>262</sup> Information about the SAVI Program and links to local rape crisis services are accessible to midshipmen through the SAVI website.

Midshipmen desiring to speak with a counselor under limited confidentiality may receive counseling through the Midshipman Development Center ("MDC").<sup>263</sup> Midshipmen with mental health needs that exceed the scope of MDC are referred to the Naval Medical Clinic in Annapolis, Maryland.<sup>264</sup>

As noted above, the Panel recognizes the Academy and cadets favorably view using CASIE cadet representatives. However, the Panel believes that the preferred initial point of sexual assault reporting should be a licensed psychotherapist. Accordingly, the Panel recommends that the Academy establish a program that combines the existing CASIE program with a Victim Advocate psychotherapist managing the program, and which offers cadets a choice in reporting either to the psychotherapist or to a cadet peer.

Cadets choosing to speak with a licensed professional should be able to contact the Victim Advocate psychotherapist<sup>265</sup> in person or through the hotline. Upon receiving the initial report, the Victim Advocate psychotherapist should ascertain whether the victim chooses to make a report to law enforcement, encourage the victim to report the offense and explain the consequences of not reporting the offense to law enforcement. If the victim chooses to report the offense, the Victim Advocate psychotherapist may assist in making the contact and activating the Academy Response Team process. If the victim desires confidentiality, the psychotherapist may continue to address the victim's mental and emotional needs, and continue to help the victim understand the importance of choosing to report the sexual assault.

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<sup>261</sup> COMDTMIDNINST 1752.1A ¶ 16.b. SAVI Advocates are required to complete twenty hours of SAVI Program training prior to appointment as a victim advocate, as well as ten to fifteen hours of annual refresher training.

<sup>262</sup> COMDTMIDNINST 1752.1A ¶ 13.b(5).

<sup>263</sup> COMDTMIDNINST 1752.1A ¶ 10.b. Midshipmen may also be referred to the Midshipman Legal Counsel or a chaplain. One civilian psychologist and several Navy psychologists staff the Midshipman Development Center ("MDC").

<sup>264</sup> The Naval Medical Clinic is staffed with two to three licensed psychologists, who are military officers, and one female civilian psychologist.

<sup>265</sup> It is suggested that the Academy develop a more neutral title for this individual to eliminate the stigma that the only reason a cadet would be making contact is because the cadet has been the victim of sexual assault.

Alternatively, cadets who are more comfortable reporting to a peer would be able to contact a CASIE cadet representative. If reports to CASIE representatives continue to be considered non-confidential, then the Panel recommends that cadets be clearly advised of this fact and further advised that a confidential reporting option is available through the Victim Advocate psychotherapist. As an alternative, it is possible for CASIE cadet representatives to come within the protective umbrella of the psychotherapist-patient privilege if they meet the definition of being an "assistant to a psychotherapist." This alternative, along with specific Panel recommendations regarding supervision and oversight of the CASIE representatives is discussed above.

Regardless of whether cadet victim reports to CASIE representatives are confidential or not confidential, it is critical that these cadets be properly supervised to ensure that they only provide for active listening, explaining options and serving as a referral resource. CASIE cadets should never cross the line into providing counseling or victim advocacy.

The Panel recommends that once the psychotherapist reporting option is fully implemented, the Academy conduct a thorough review of the CASIE program with a view toward either reducing the size of the program or eliminating it entirely. While the Panel does not disagree with providing an avenue for peer support, the Panel is concerned with the significant burden that is placed upon the shoulders of these young cadet volunteers, and the potential for the mishandling of sexual assault cases, however well-intentioned the cadet might be. The staffing of the Cadet Counseling Center can more than adequately support the sexual assault reporting process and the victim advocacy program without the need to deputize cadet volunteers.

As an interim measure, the Panel recommends that the Academy consider modeling the CASIE program after the Respect Program at West Point, and expand the program to include assisting cadets with issues such as homesickness, respect for fellow cadets and academic difficulties. Doing so would also serve to diminish the impression, often stigmatizing, that the cadet has approached a CASIE representative because she had been sexually assaulted.

Finally, the Panel believes that information about sexual assault awareness must be readily available and easily accessible. Therefore, the Panel recommends the Academy create a web site devoted to educating cadets about sexual assault. The web site should be accessible through an intuitive search of the Academy homepage, and contain all of the information presented to the Cadet Wing by CASIE representatives, and the information

provided in the Sexual Assault Awareness Month seminars. The web site should provide the phone number for the sexual assault reporting hotline, the names and phone numbers of available psychotherapists and the names of CASIE cadet representatives listed by squadron. The web site should also include information about rape kit examinations, the importance of follow-up care such as testing for pregnancy and sexually transmitted diseases (STDs), the names and locations of Air Force, local and Academy support organizations,<sup>266</sup> and links to other relevant web sites.

### 3. Policy to Encourage Reporting: "Amnesty"

All Academy personnel have a duty to report suspected violations of established standards to the cadet's chain of command, including any involvement with civilian or military law enforcement authorities.<sup>267</sup> Such reports are made on the Air Force Cadet Wing Form 10, *Report of Conduct*.<sup>268</sup>

Prior to March 2003, the Academy had a discretionary policy, intended to encourage cadets to report sexual assaults, that provided that cadets would "generally not be disciplined" for self-identified violations of cadet instructions that may have occurred in connection with an assault.<sup>269</sup> However, the *Working Group Report* found that the Academy's amnesty policy "was not well understood by cadets or leadership, and uncertainty as to its efficacy reduced any effect it may have had in encouraging reporting."<sup>270</sup>

Several cadet victims of sexual assault reported to the Working Group, the media and the Panel that cadets were afraid to report instances of sexual assault because of concern that they, and other cadet witnesses, would be punished for infractions. Such infractions included underage drinking or fraternization that occurred in connection with the assault or which would be revealed through investigation of the assault. Some cadets have reported that they were punished for such infractions.

<sup>266</sup> This should include CASIE, AFOSI, the Cadet Counseling Center, TESSA and any other organization the Academy deems appropriate. The web site should provide the mission statement for each organization and whether it is affiliated with the Academy.

<sup>267</sup> USAFA Cadet Wing Instruction 51-201 at ¶3.1.

<sup>268</sup> *Id.* at ¶3.1.1.

<sup>269</sup> USAFA Instruction 51-201 ¶2.8.3: "Violation of Cadet Wing Instruction. To encourage cadets to report sexual assaults and to ensure they receive available medical and counseling services, cadet victims will generally not be disciplined for self-identified violations of cadet instructions (such as pass violations, unauthorized alcohol consumption, or unauthorized dating) that may have occurred in connection with an assault. AOCs may still counsel cadets about such violations; however, the decision whether or not to sanction other witnesses for related minor offenses will be made on a case-by-case basis."

<sup>270</sup> *Working Group Report*, at 166.

The Panel questioned Academy leadership on the issue of whether the Academy took disciplinary action against female cadets who alleged sexual assault. In response to questioning, the former Training Group Commander told the Panel that "there were never any victims who served punishments that claimed sexual assault."<sup>271</sup> Academy officials later clarified this statement and indicated that, while an actual punishment was not imposed, sexual assault victims had received Form 10s and, in the majority of cases, would have been placed on restriction while the matter which was the subject of the Form 10 was under review.<sup>272</sup> It is not difficult to understand how a cadet could perceive this loss of liberty as being tantamount to punishment.

The *Agenda for Change* directed implementation of a new amnesty policy for the Academy:

*In all reported cases of sexual assault, amnesty from Academy discipline arising in connection with the alleged offense will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, any cadet involved in hindering the reporting or investigation of the incident, and the senior ranking cadet in attendance. The senior ranking cadet will be responsible and accountable for all infractions committed by junior cadets.*<sup>273</sup>

The intent of Air Force leadership was that this provision would give "blanket amnesty with few exceptions."<sup>274</sup> In an effort to deter the potential for abuse of amnesty, the *Agenda for Change* also provides that "any false accusations of sexual assault will be prosecuted to the full extent of the law."<sup>275</sup>

In subsequent guidance, the Academy has defined "Academy discipline" to include infractions such as "over the fence," unauthorized consumption of alcohol and fraternization or unprofessional relationships.<sup>276</sup> Additionally, Academy officials have advised the Panel that

<sup>271</sup> Statement of Colonel Slavec to the Panel in Colorado Springs, Colo. (July 11, 2003).

<sup>272</sup> Video Teleconference, *Agenda for Change* Status Briefing by Colonel Gray with Panel Staff (July 24, 2003). USAFA Instruction 51-201 ¶3.2.5 mandates that "cadets cannot sign out on any liberties or passes until the AFCW Form 10 is completely processed and closed out." Additionally, cadets pending Class D violations are restricted to the squadron area.

<sup>273</sup> *Agenda for Change*, at 6.

<sup>274</sup> Statement of Mary L. Walker to the Panel in Washington, D.C. (June 23, 2003).

<sup>275</sup> *Agenda for Change*, at 6.

<sup>276</sup> *Commander's Guidance 06-3* (June 6, 2003).

amnesty will not be granted in the case of an Honor Code violation.<sup>277</sup> Academy officials concede that they are still grappling with the amnesty policy<sup>278</sup> and there are still several issues raised by the Working Group that need to be addressed.<sup>279</sup>

While the Panel understands that the newly-established Academy Response Team will be involved in addressing collateral misconduct in cases of sexual assault,<sup>280</sup> the Panel is concerned that a new school year has already commenced without a clearly defined policy. Consequently, the Panel reviewed the amnesty policies and practices at West Point and the Naval Academy to determine if those policies would assist in formulating an Air Force Academy policy.

At the outset, the West Point and Naval Academy instructions<sup>281</sup> do not refer to their policies as “amnesty”; rather, they are policies to encourage reporting. This change in focus

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<sup>277</sup> Video Teleconference, *Agenda for Change* Status Briefing by Colonel Gray with Panel Staff (July 24, 2003).

<sup>278</sup> *Id.*

<sup>279</sup> The Working Group noted that several issues involving the amnesty policy need to be addressed to avoid misunderstandings in the future: whether amnesty will apply to cadet infractions factually related to the sexual assault, but not part of the specific incident of assault; whether amnesty will apply to matters beyond mere cadet infractions, such as violations of the UCMJ; whether other command responses, such as counseling, are permissible even though amnesty applies; and, whether victim misconduct can be considered for potentially adverse purposes other than discipline. (*Working Group Report*, at page 49.)

<sup>280</sup> Interview by Panel Staff with Academy Response Team in Colorado Springs, Colo. (Aug. 4, 2003).

<sup>281</sup> *Id.*

<sup>281</sup> The West Point policy regarding victim and witness misconduct in cases of sexual assault is set forth in USCC POLICY MEMORANDUM 39-03, United States Corps of Cadets (USCC) Sexual Assault Response Program (Apr. 25, 2003). Paragraph 6(c)(3) provides: “The Chain of Command’s provision to encourage reporting. The Chain of Command wants all incidents of sexual assault or past sexual assaults reported. In cases where the behavior by the victim may also be considered an offense ... the circumstances surrounding the assault and its impact upon the victim shall be considered in determining whether it is appropriate to initiate or recommend administrative, disciplinary, or judicial action against a victim. The Commandant makes such decisions concerning cadet victims on a case-by-case basis. Final decisions and/or recommendations will be made after a thorough review of all reasonably available information and careful consideration of the severity of the offense(s) and the likelihood that the offense(s) would have otherwise been reported. Recognizing that victims may be reluctant to provide relevant information because it may implicate misconduct by non-assailant peers or friends, this policy provision is intended to encourage victim reporting and all matters shall be considered and carefully weighed before disciplining other cadets based on such information.”

The Naval Academy policy is set forth in COMDTMIDNINST 1952.1, Sexual Assault Victim Intervention (SAVI) Program (May 7, 2003). Paragraph 8(d) provides: “In cases where behavior by the victim may also be considered an offense ... the circumstances surrounding the assault and its impact upon the victim shall be considered in determining whether it is appropriate to take administrative or disciplinary action against the victim. To encourage midshipmen to report sexual assaults and to ensure they receive available medical and counseling services, midshipmen victims of sexual assault generally

may alleviate some of the negative connotations associated with the term “amnesty,” and it avoids using a term that is not recognized in the administration of military justice. Second, neither of the other two academies allows for a blanket grant of amnesty, but provides that the decisions will be made on a case-by-case basis. A blanket grant of amnesty may create a perception that it has been used as a sword, rather than as a shield, should the alleged victim claim “sexual assault” to avoid accountability for the victim’s own misconduct or the discipline of “witness” friends for their misconduct. Third, the Naval Academy and West Point policies postpone decisions regarding victim misconduct until after a thorough review of all reasonably available evidence, careful consideration of the severity of the offense, and the likelihood that the offense would have otherwise been reported. Fourth, the West Point policy also sets out who will be the decision authority. A similar statement would be helpful to the Air Force Academy, particularly since there was apparent confusion among prior Academy leadership regarding who made amnesty decisions.<sup>282</sup> Finally, the other two academy policies provide that, in the case of non-assailant peers and friends, the policy to encourage victim reporting should be given careful consideration before making a determination on their discipline.

**The Panel recommends the Air Force review the West Point and Naval Academy policies and adopt a clear policy to encourage reporting of sexual assault.** The policy should provide the Commandant or Superintendent shall make determinations on a case-by-case basis. This decision should involve advice from the Academy Response Team and the Academy Staff Judge Advocate, and provide for careful consideration of many factors, including the circumstances surrounding the alleged sexual assault, the evidence supporting the allegation of sexual assault, the seriousness of the victim’s reported misconduct and its relationship to the sexual assault, and need to encourage victims now and in the future to report sexual assaults.

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will not be disciplined for self-reported violations of [the UCMJ or administrative Conduct System] such as alcohol offenses or prior consensual sexual misconduct factually related to the assault. Midshipmen will generally receive Responsibility Counseling ... for such violations. Final decisions concerning the processing of violations committed by midshipmen victims will be made on a case-by-case basis, after a thorough review of all reasonably available information, and considering the severity of the offense(s) and the likelihood that the offense(s) would have otherwise been reported. Recognizing that victims may be reluctant to provide relevant information also implicating misconduct by non-assailant peers or friends, the above policy to encourage victim reporting shall be considered and carefully weighed before disciplining other midshipmen based on such information.”

<sup>282</sup> *Working Group Report*, at 47.

## B. Response to Allegations of Sexual Assault

### 1. Academy Response Team

Prior to March 2003, the Academy body charged with providing interdisciplinary case management in cases of sexual assault was the SASC.<sup>263</sup> The SASC was also charged with serving as a central resource for tracking and monitoring reported cases of sexual assault and providing biannual reports on sexual assault issues to senior Academy leadership. The *Working Group Report* found that the SASC had failed to perform its primary duty of interdisciplinary case management and was not effectively engaging all components responsible for deterrence of, and response to, sexual assaults.<sup>264</sup> In response to these identified shortcomings, the *Agenda for Change* directed an Academy Response Team (“ART”) be established “to provide a victim of sexual assault immediate assistance, develop the facts, and initiate appropriate actions.”<sup>265</sup> According to Academy guidance, the purpose of the ART is to provide effective, immediate response and victim support, as well as follow-on case management.<sup>266</sup> Additionally, Academy officials have advised the Panel that the ART will perform all functions of the former SASC, including tracking and reporting sexual assault cases.<sup>267</sup>

There are four major responsibilities of the ART in the prevention of, and response to, sexual assaults: (1) first response; (2) case management; (3) training; and (4) assessment.<sup>268</sup> In its first response role, Tier I of the ART will be notified immediately upon report of an allegation of sexual assault. The Tier I team consists of the Vice Commandant of Cadets, a Victim Advocate

<sup>263</sup> USAFA Instruction 51-201 § 2.4. According to the instruction, the SASC was responsible for serving as “the (1) Office of Primary Responsibility (“OPR”) for coordinating medical services, psychological counseling, legal advice, administrative intervention, and education concerning sexual assault; (2) key administrative body for the Cadet Sexual Assault Hotline, and the Victim Advocate Program; and (3) central resource for tracking and monitoring reported cases of sexual assault.”

<sup>264</sup> *Working Group Report*, at 53-55.

<sup>265</sup> The *Agenda for Change* specifically tasks the Vice Commandant with overseeing the Academy’s sexual climate issues and directs that the Vice Commandant will: “With the support of officers detailed to the Vice Commandant from the Office of the Staff Judge Advocate, the Counseling Center, and the Office of Special Investigations, develop, and implement procedures for an Academy Response Team (comprising medical, legal, counseling, and command elements) to provide a victim of sexual assault immediate assistance, develop the facts, and initiate appropriate actions. The members of this team will receive special training on the management of sexual assault cases including victim psychology. The cadet alleging sexual assault will be thoroughly briefed on the investigative and legal process.” *Agenda for Change*, at 3.

<sup>266</sup> *Commander’s Guidance 05-8* (May 27, 2003).

<sup>267</sup> Video Teleconference, *Agenda for Change* Status Briefing by Colonel Gray with Panel Staff (July 24, 2003).

<sup>268</sup> Statement of Colonel Gray to the Panel in Colorado Springs, Colo. (July 11, 2003).

Coordinator, an AFOSI liaison,<sup>288</sup> a legal liaison, an AFOSI representative and a Security Forces representative.<sup>289</sup> The AFOSI liaison and legal liaison are detailed directly to the Vice Commandant and, along with the Victim Advocate Coordinator, will be responsible for ensuring that the complainant is offered all available services and explaining to the complainant (and, if she desires, her parents or other individuals<sup>290</sup>) the applicable investigative and legal processes. Whenever necessary, the Vice Commandant may activate Tier 2 of the response team, which could include chaplains or medical personnel. Additionally, the Vice Commandant will be responsible for the dissemination of information up the chain of command to the Commandant and the Superintendent and, if appropriate, down the chain of command to the responsible squadron AOC.

In its case management role, the ART will address longer-term issues, such as whether the complainant or the alleged perpetrator should be moved out of the dormitories and if the complainant needs assistance in alleviating the impact on her studies, to include receiving a leave of absence from the Academy.<sup>291</sup> Most importantly, the ART will be responsible for addressing collateral misconduct and infractions committed by a complainant or witnesses to the offense and, where warranted, stopping inappropriate Academy cadet disciplinary actions that may be in process.<sup>292</sup>

In its training role, the ART will be responsible for providing training to all levels of the Academy, both assigned personnel and the Cadet Wing.<sup>293</sup> In particular, in the next several months, the Vice Commandant and key members of the ART will meet with each individual

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<sup>288</sup> The AFOSI liaison will not be involved in the investigation of the alleged assault, but will serve as a victim liaison and Academy resource.

<sup>289</sup> *Commander's Guidance 05-8* (May 27, 2003).

<sup>290</sup> In his statement to the Panel, Senator Allard expressed concern that the role of the victim's parents is often largely overlooked. Statement of Senator Allard to the Panel in Washington, D.C. (June 23, 2003). The Panel recognizes that parents can provide a tremendous amount of support to victims of sexual assault, and the Panel is confident that the victim-oriented Academy Response Team ("ART") is well-suited to appropriately involve parents in the support and healing process. However, the Panel also recognizes the fact that Academy cadets are emancipated adults, and any involvement of parents must be with the express consent of the cadet.

<sup>291</sup> Statement of Colonel Gray to the Panel in Colorado Springs, Colo. (July 11, 2003). As part of its case management responsibility, the ART will utilize its expertise to streamline appointments and engage on the victim's behalf when issues related to the sexual assault impact academic, military, or athletic performance. As an example, the ART will use its representative in the medical clinic to assist with appointments for the victim and ensure that one medical provider is assigned to the victim so they do not have to re-explain the sexual assault incident to a different provider each time they seek medical care.

<sup>292</sup> Interview by Panel Staff with ART in Colorado Springs, Colo. (Aug. 4, 2003).

<sup>293</sup> Statement of Colonel Gray to the Panel in Colorado Springs, Colo. (July 11, 2003).

squadron to discuss sexual assault policies and procedures. The intent of these meetings is "to build trust and confidence with cadets for the prevention of sexual assault cases and the prompt reporting of incidents, should they occur."<sup>295</sup>

The Panel conducted an extensive review of the newly-established ART, its functions and processes, and its assigned personnel. The Panel has concluded that the ART presents a significant positive step toward achieving a consistent, appropriate response to allegations of sexual assault, and to restoring trust and confidence in the Academy's handling of these allegations. In particular, the key team members have an impressive depth and breadth of experience and a high level of enthusiasm and commitment to these important responsibilities. The Panel is encouraged that the ART has the necessary foundations to endure beyond the short-term implementation of the *Agenda for Change* and to become a lasting Academy institution.

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The Panel recommends that the Academy ensure that the ART is always proactively involved in cases in which the victim and potential witnesses are also alleged to have committed misconduct. The ART may play a critical role in ensuring that the victim and potential witnesses are not

subjected to Academy discipline until an appropriately high-level Academy official carefully considers all the facts and circumstances. The Panel also recommends that the ART continue to remain involved in a case, in the event that a particular allegation is suspected to be false.<sup>296</sup> The ART may assist the chain of command in making a well-reasoned, fact-based decision on whether to pursue the alleged false allegation.

Finally, the licensed psychotherapist overseeing the sexual assault reporting process should not be the Victim Advocate Coordinator assigned to the ART. If the Victim Advocate Coordinator is also the psychotherapist engaging in privileged communications with the victim, he or she may encounter difficulty distinguishing confidential information when discussing the case within the ART.

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<sup>295</sup> Memorandum for Record from Colonel Gray (Aug. 1, 2003).

<sup>296</sup> The *Agenda for Change* states "any false accusations of sexual assault will be prosecuted to the full extent of the law." *Agenda for Change*, at 6.

## 2. Law Enforcement Response

The AFOSI is responsible for conducting investigations of serious crimes, including rape, sodomy, carnal knowledge, child molestation and assaults involving serious bodily harm.<sup>297</sup> Some cadets, CASIE representatives and victim advocates have expressed concern about AFOSI's treatment of victims and the manner in which it conducted sexual assault investigations.<sup>298</sup> These concerns generally involve complaints about the unpleasantness of the investigative process, insensitivity of the investigating Special Agents and the negative impact on victims and witnesses that sometimes result from the process.<sup>299</sup> The Panel also heard from representatives of TESSA,<sup>300</sup> expressing doubts about AFOSI's ability to effectively investigate sexual assault cases.

AFOSI policy and guidance specifically recognizes that the psychology of sexual victimization or exploitation may easily go beyond the capability of the average agent.<sup>301</sup> According to AFOSI leadership, this explicit recognition of the difficulties presented by these cases influences its policies, guidance and resources for conducting sexual assault investigations.<sup>302</sup>

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<sup>297</sup> In accordance with a Memorandum of Understanding between the Academy and the El Paso County Sheriff's Office, the AFOSI has primary jurisdiction for sexual assaults upon cadets on Academy grounds. AFOSI is governed by Pub. L. No. 99-145, 99 Stat. 583 (1985); DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," June 21, 2002; Air Force Policy Directive 71-1, "Criminal Investigations and Counterintelligence," July 1, 1999; Air Force Instruction 71-101, Volume 1, "Criminal Investigations," December 1, 1999; *AFOSIMAN* 71-122, "Criminal Investigations," August 12, 2002; and the AFOSI Handbook, "Special Investigations Crime Scene Handbook," January 10, 2000 71-124. In addition to complaints of sexual assault, AFOSI conducts investigations of abuse of authority involving sexual behavior that may not be criminal in nature, but falls into the category of sexual harassment such as unwelcome comments, solicitation of sexual acts, and related conduct. Instructor/Student and cadet-on-cadet incidents are included in the category of matters investigated by AFOSI.

<sup>298</sup> The investigation of specific complaints regarding the actions of Academy administration and AFOSI staff in responding to complaints of sexual assault is ongoing by the Air Force IG. According to representatives of the Air Force IG, seven of twenty-six complaints received from cadets and other sources include issues involving AFOSI.

<sup>299</sup> The Panel noted that Cadets, a Cadet Counseling Center Victim Advocate, CASIE Representatives and TESSA Counselors all have expressed various concerns about reporting incidents of sexual assault to AFOSI. These concerns included perceptions that the victim's complaint was not believed by the agent, perceptions that the investigation appeared to focus on the conduct of the victim and witnesses, a perceived attitude on the part of the agent as uncaring and distant, concerns that AFOSI was not keeping information confidential and the fact that some investigations did not result in criminal charges.

<sup>300</sup> Statement of Jennifer Bier and Janet Kerr to the Panel in Colorado Springs, Colo. (July 10-11, 2003).

<sup>301</sup> *AFOSIMAN* 71-122 ¶ 2.3.1.1

<sup>302</sup> Interview by Panel Staff with Colonel Shirley at Andrews Air Force Base, Md. (Aug. 5, 2003).

The AFOSI manual identifies rape as among the most serious of crimes to be investigated because of the long-lasting trauma for the victim and persons close to the victim. Accordingly, Special Agents are cautioned to use extreme care to ensure that investigative procedures do not cause or aggravate any emotional harm to the victim. It is required that all reported allegations of rape be investigated to their logical conclusion, and the heads of individual offices must immediately coordinate these investigations with their respective Forensic Sciences Consultant ("FSC").<sup>303</sup>

AFOSI agents must adhere to a number of requirements when interviewing and working with victims of sexual assault.<sup>304</sup> Sometimes it is necessary that the victim be interviewed several times to fully develop the evidence, resolve inconsistencies that may exist and clarify the circumstances and details of the incident. However, before scheduling a clarification interview with a victim, the agent must first conduct a thorough analysis of the case to determine if the interview will add significant information to the investigation or likely yield information to clear a wrongly accused subject. Additionally, the Detachment Commander, the FSC, Staff Judge Advocate and, when appropriate, AFOSI headquarters, must first be consulted.<sup>305</sup>

AFOSI has stringent guidelines on investigations of victims. Such investigations must be based on evidence indicating that the victim knowingly made a complaint against an innocent person, may not be initiated merely because the victim refused to cooperate, must be investigated separately from the sexual assault complaint, and must be coordinated with the Detachment Commander, servicing FSC, and an AFOSI headquarters clinical psychologist.<sup>306</sup>

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<sup>303</sup> Forensic Sciences Consultants ("FSC") are experienced senior Special Agents who have completed the requirements of a Masters of Forensic Science degree from George Washington University and formal training through the Armed Forces Institute of Technology Forensic Science Program. FSC's provide field offices with on-scene assistance, telephonic advice, expert coordination, and training in most forensic science specialties. Also, they testify as expert witnesses at military judicial proceedings in such areas as laboratory analyses of evidence, issues related to physical and biological evidence, and crime scene reconstruction. *AFOSIMAN* 71-22, ¶ 2.3.3 and 2.3.3.1.1; *see also* AFOSI "Talking Paper on AFOSI Forensic Sciences Consultants."

<sup>304</sup> Guidance for AFOSI agents includes caution that victims must be approached tactfully and in a sensitive manner because they may be in shock and are often traumatized by the incident. Victims must be asked if they would like an investigator of the same sex to be present when they are interviewed and accorded their request as desired. While victims and witnesses should be encouraged to fully cooperate in the investigation, they should not be intimidated or forced to cooperate. Agents may consult with Staff Judge Advocates and the victim's commander to determine whether the victim should be ordered to submit to interviews, but such requests are seldom made by AFOSI.

<sup>305</sup> *AFOSIMAN* 71-122, ¶ 2.3.3.4.1, 2.3.3.4.2.

<sup>306</sup> *AFOSIMAN* 71-122 ¶ 2.3.3.1.2, 2.3.3.3.3.

"Psycho-physiological Detection of Deception" (PDD) examinations, commonly referred to as polygraph examinations, may be administered to subjects, victims and witnesses in sexual assault cases.<sup>307</sup> Polygraph examinations are investigative tools that assist the investigator in considering the information received from individuals during an investigation.<sup>308</sup> The results of the examination and any statements made by the subject during the examination process, considered in light of all of the available evidence, may assist the investigator in deciding whether to continue or conclude the investigation. However, polygraph examinations are not to be routinely offered to victims and all examination requests must be approved by AFOSI senior commanders and/or the PDD Program Management Office.<sup>309</sup>

In addition to FSCs and polygraph examination specialists, AFOSI has two Ph.D.-level clinical psychologists on its headquarters staff who are recognized experts in domestic violence and sexual assault issues. These clinical psychologists are on call 24 hours daily to provide assistance in sexual assault cases.<sup>310</sup>

AFOSI agents are required to comply with the Victim and Witness Protection Act of 1982.<sup>311</sup> AFOSI will provide victims and witnesses with a copy of DD Form 2701, *Initial Information for Victims and Witnesses*, and will inform victims and witnesses where they may go to receive assistance. Additionally, AFOSI will ensure that reasonable protection is provided to victims and witnesses whose safety and security are jeopardized.

According to AFOSI leadership, agents are trained to be generalists effectively responding to the numerous criminal complaints received by its detachments worldwide. AFOSI leadership cannot justify the placement of specialists in its detachments given its mission, the varied size of its detachments<sup>312</sup> and the volume of criminal activity in any particular category. However, AFOSI compensates for the lack of specialization with training and supporting resources.

Special Agents receive basic criminal investigative training through the Federal Law Enforcement Training Center's eight-week "Criminal Investigation Training Program."

<sup>307</sup> AFOSIMAN 71-103, Vol. 1, ¶ 1, 2.

<sup>308</sup> For example, in cases in which there is no forensic or independent evidence of force and the issue of consent is in question, a polygraph examination of the subject may be administered to assist the investigator in evaluating the subject's statement that the activity was consensual.

<sup>309</sup> AFOSIMAN 71-103, Vol. 1, ¶ 2.1, 4.

<sup>310</sup> Interview by Panel Staff with Colonel Shirley at Andrews Air Force Base, Md. (Aug 5, 2003).

<sup>311</sup> 18 U.S.C. §§ 1512-1515, 3663, 3664.

<sup>312</sup> AFOSI Detachments generally range in size from four to forty agents.

Following the successful completion of this course, agents then attend a six- to eight-week AFOSI Agency Specific Program ("ASP") that provides training on the UCMJ and the types of investigations they are likely to conduct as military criminal investigators. Much of this training is focused on crimes against persons, such as assault, robbery and rape. Upon graduation from ASP, agents are assigned to a detachment to complete a one-year probationary period. During this probationary period agents must successfully complete a mandatory Career Development Course intended to bring them to a fully qualified level.<sup>313</sup>

According to AFOSI, its agents receive more than 90 hours training in support of sexual assault investigations. This training involves both general instruction applicable to all investigations and focused instruction on the investigation of crimes against persons, including sexual assaults.<sup>314</sup> The training addresses various aspects of the effects of violent crimes on victims, such as the primary injuries inflicted by a criminal on a victim, the secondary injuries inflicted by society that may result in injustice, indignity and isolation for the victim, and the victim's need for emotional support, safety and security. In addition to these courses, agents regularly receive in-service training throughout their careers to maintain the currency of their skills and meet the needs of AFOSI's mission.

Initiating and maintaining a positive relationship with a victim is often a factor of the skill and personality of the case agent. Maintaining rapport with a victim of traumatic crime and being an independent and objective finder of fact, is often a delicate balance. However, AFOSI leadership believes that the training its agents receive, the availability of highly specialized resources (such as FSCs and clinical psychologists), and the supervision and oversight given these cases provide an effective framework for responding to these challenges.<sup>315</sup>

AFOSI has designated the Commander of the Academy's AFOSI detachment, Detachment 808, as a field grade officer position. The current Detachment 808 Commander is a certified FSC (although not currently assigned to perform in that position) with extensive experience in conducting sexual assault investigations. The remaining staff, comprised of

<sup>313</sup> Interview by Panel Staff with Colonel Shirley at Andrews Air Force Base, Md. (Aug. 5, 2003); E-mail from Colonel Michael McConnell, USAF, Office of the Secretary of the Air Force, Director, Special Investigations (SAF/IGX), to Panel Staff (Aug. 4, 2003); and AFOSI "Talking Paper on Sexual Assault Investigation Training and Victim Sensitivity."

<sup>314</sup> *Id.* The training includes specific topics such as use of sexual assault kits, physical and biological evidence, crime scene processing, techniques and strategies for resolving inter-personal crimes of violence, the victim/witness assistance program, and interviewing victims. Interviewing is comprised of 15 hours of lecture and 18 hours of practical exercises that include topics relating to interaction with victims.

<sup>315</sup> Interview by Panel Staff with Colonel Shirley at Andrews Air Force Base, Md. (Aug 5, 2003).

officers, non-commissioned officers and civilian special agents, was specifically selected for assignment to the Academy because of their experience and perceived ability to work in that sensitive environment. Additionally, agents, including the regional FSC for Detachment 808, are available from nearby Peterson Air Force Base and Buckley Air Force Base to provide assistance when necessary.

AFOSI leadership and the Detachment 808 Commander believe the training received by agents, coupled with the availability of real time resources, provides a fully capable and robust framework for responding to sexual assaults at the Academy. To improve its skills in this area and ensure a compassionate response to victims, AFOSI is developing an advanced course of instruction on sexual assault investigations that will be first presented to Detachment 808 agents in fall 2003. The course will be modeled on nationally recognized and respected training that is currently given to civilian law enforcement officers.

The Panel commends AFOSI's decision to develop advanced training in sexual assault investigation that it will provide to its Academy agents. The Panel encourages AFOSI to consider other ways to enhance the capacity of Detachment 808 to deal with the environment in which it operates. This may include extending the normal rotational cycle of its experienced agents, assuring that newly assigned agents are briefed on the Academy environment and sensitivities and availing itself of resources in the civilian law enforcement community.

The Panel recommends the AFOSI Academy detachment participate fully in the recently established Academy Response Team and use it for informing and educating Academy leadership, victim advocates and CASIE representatives of their responsibilities and limitations. AFOSI's educational efforts should include programs that provide a basic understanding of how and why it takes certain investigative actions, and the benefits of timely reporting and investigation of all sexual assault incidents.

### *3. Rape Kit Exams*

The Panel concurs with the Air Force's position that rape kit examinations should continue to be done by certified and experienced Sexual Assault Nurse Examiners at Memorial Hospital in Colorado Springs, pursuant to the practice that has been in place for some time.<sup>316</sup> The continued treatment of rape victims at Memorial Hospital assures the availability of highly specialized staff and facilities that are not currently available at the Academy, that medical staff who treat cadet victims are trained and experienced in treating sexual assault injuries, and, that

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<sup>316</sup> Memorandum from Secretary Roche to Assistant Secretary Dominguez (Aug. 14, 2003).

forensic evidence and other information collected as the result of the examination and treatment is preserved for use in future legal proceedings. However, the Panel encourages the Academy to continue to explore options for making rape kit exams more easily accessible to cadet victims at the Academy hospital and consider possible options for victims to receive a rape kit exam confidentially.

The Panel recommends the Academy take measures to ensure that transportation to the hospital, and any other necessary logistical support, is always available to a cadet choosing to receive a rape kit examination. In particular, transportation must be provided by an appropriate individual, such as the psychotherapist or Academy Response Team member who will be discreet and can address the victim's emotional needs during the long car trip to the hospital.

## VII. RECOMMENDATIONS

After performing the study required by H.R. 1559 and reviewing the policy changes being implemented by the *Agenda for Change*, the Panel has made various recommendations throughout this report. Those recommendations, organized according to the major area of this report to which they apply, are summarized below.

### Awareness and Accountability – Section III

1. The Panel recommends that the DoD IG conduct a thorough review of the accountability of Academy and Air Force Headquarters leadership for the sexual assault problems at the Academy over the last decade. This review should include an assessment of the actions taken by leaders at Air Force Headquarters as well as those at the Academy, including General Gilbert, General Wagie and Colonel Slavec. The review should also consider the adequacy of personnel actions taken, the accuracy of individual performance evaluations, the validity of decorations awarded and the appropriateness of follow-on assignments. The Panel further recommends that the DoD IG provide the results of the review to the House and Senate Armed Services Committees and to the Secretary of Defense. (Page 42)

### Command Supervision and Oversight at the Academy – Section IV

2. The Panel recommends that the Secretary of the Air Force adopt the management plan announced on August 14, 2003, including the creation of an Executive Steering Group, as the permanent organizational structure by which the senior Air Force leadership will exercise effective oversight of the Academy's deterrence of and response to incidents of sexual assault and sexual harassment. (Page 45)

3. The Panel recommends that the Air Force extend the tour length of the Superintendent to four years and the tour length of the Commandant of Cadets to three years in order to provide for greater continuity and stability in Academy leadership. (Page 46)

4. The Panel recommends that the Air Force prepare a legislative proposal to revise 10 U.S.C. § 9335(a) to expand the available pool of potential candidates for the position of Dean of Faculty beyond the current limitation to permanent professors. (Page 46)

5. The Panel recommends that the Academy Board of Visitors:

- Operate more like a corporate board of directors with regularly organized committees charged with distinctive responsibilities (e.g., academic affairs, student life, athletics, etc.). The Board should meet not less than four times per year, with at least two of those meetings at the Academy. To the extent practical, meetings should include at least one full day of meaningful participation and should be scheduled so as to provide the fullest participation by Congressional members. Board members must have unfettered access to Academy grounds and cadets, to include attending classes and meeting with cadets informally and privately; and
- Receive candid and complete disclosure by the Secretary of the Air Force and the Academy Superintendent of all institutional problems, including but not limited to, all gender related matters, cadet surveys and information related to culture and climate and incidents of sexual harassment and sexual assaults. (Page 49)

6. The Panel recommends that the Air Force prepare a legislative proposal to revise 10 U.S.C. § 9355. The suggested revisions should include both the foregoing and following recommendations:

- Changing the composition of the Board to include fewer Congressional (and, therefore, more Presidential-appointed) members, more women and minority individuals and at least two Academy graduates;
- Requiring that any individual who accepts an appointment as a Board member does, thereby, pledge full commitment to attend each meeting of the Board, and to carry out all of the duties and responsibilities of a Board member, to the fullest extent practical;
- Terminating any Board member's appointment who fails to attend or fully participate in two successive Board meetings, unless granted prior excusal for good cause by the Board Chairman;
- Providing clear oversight authority of the Board over the Academy, and direct that, in addition to the reports of its annual meetings required to be furnished to the President, it shall submit those reports and such other reports it prepares, to the Chairmen of the Senate and House Armed Services Committees, the Secretary of Defense and the Secretary of the Air Force, in order to identify all matters of the Board's concerns with or about the Air Force Academy and to recommend appropriate action thereon; and
- Eliminating the current requirement for Secretarial approval for the Board to visit the Academy for other than annual visits. (Pages 49-50)

## Organizational Culture & Character Development – Section V

7. The Panel recommends that the Air Force conduct the same review of Non-Commissioned Officer assignment policies and tour lengths at the Academy as it is conducting for officer assignments policies. (Page 56)

8. The Panel recommends that the Academy draw upon climate survey resources at the Air Force Personnel Center Survey Branch for assistance in creating and administering the social climate surveys. Further, the Panel recommends that the Academy keep centralized records of all surveys, responses and reports and keep typed records of all written comments (not abbreviated or paraphrased) – to be provided as an appendix to any report. All such reports must be provided to Academy leadership. (Page 58)

9. The Panel recommends that the Academy place a renewed emphasis on education and encouragement of responsible consumption of alcohol for all cadets. (Page 61)

10. To ensure the safety of every cadet, the Panel recommends that the Academy implement a policy permitting unrestricted (i.e., no explanation required at any time) private access to telephones for the use by any cadet, including Fourth-Class cadets, in an emergency. (Page 62)

11. The Panel recommends that the Center for Character Development education instruction be mandatory for all cadets. The Panel further recommends the cadet curriculum require completion of at least one course per year that emphasizes character values, for which cadets shall receive a grade and academic credit. (Page 68)

12. While the Panel appreciates that the demands on the time of new cadets are significant, we recommend reassessing the training calendar to place prevention and awareness training at a time of day in which cadets will be most receptive to the training session. (Page 73)

13. The Panel recommends that the Academy focus on providing better training to the trainers of prevention and awareness classes including enlisting the aid of faculty members who are well-skilled in group presentation techniques that are effective and energize the cadets, developing small group training sessions which will be more effective than large audience presentations, developing training sessions that educate the students on the reporting process and Air Force Office of Special Investigations investigatory practices and procedures, and establishing a review process for training session materials that includes the use of the

Academy Response Team and cadet cadre or some other multi-disciplinary group of experts. (Page 74)

## Intervention and Response to Sexual Assault – Section VI

14. The Panel recommends that the Air Force establish a policy that achieves a better balance of interests and properly employs psychotherapist-patient counseling, and its associated privilege, for the benefit of cadet victims. The Panel recommends that the Academy's policy for sexual assault reporting clearly recognize the applicability of the psychotherapist-patient privilege and that the Academy staff the Cadet Counseling Center with at least one Victim Advocate provider who meets the legal definition of "psychotherapist." Further, the Panel recommends that the individual assigned to serve as the initial point of reporting, whether by "hotline" or in person, be a qualified psychotherapist who has completed a recognized rape crisis certification program. Optimally, the Victim Advocate psychotherapist should be in charge of the sexual assault program within the Cadet Counseling Center and will provide direction and supervision to those assistants supporting the assigned psychotherapists. (Page 80)

15. The Panel recommends that the Academy establish a program that combines the existing CASIE program with a Victim Advocate psychotherapist managing the program, and which offers cadets a choice in reporting either to the psychotherapist or to a cadet peer. If reports to CASIE representatives continue to be considered non-confidential, then the Panel recommends that cadets be clearly advised of this fact and further advised that a confidential reporting option is available through the Victim Advocate psychotherapist. As an alternative, it is possible for CASIE cadet representatives to come within the protective umbrella of the psychotherapist-patient privilege if they meet the definition of being an "assistant to a psychotherapist." (Pages 86-87)

16. The Panel recommends that once the psychotherapist reporting option is fully implemented, the Air Force Academy conduct a thorough review of the CASIE program with a view toward either reducing the size of the program or eliminating it entirely. As an interim measure, the Panel recommends that the Academy consider modeling the CASIE program after the Respect Program at West Point, and expand the program to include assisting cadets with issues such as homesickness, respect for fellow cadets and academic difficulties. (Page 87)

17. The Panel recommends that the Academy create a web site devoted to educating cadets about sexual assault. (Page 87)

## RECOMMENDATIONS

18. The Panel recommends that the Air Force review the West Point and Naval Academy policies to encourage reporting of sexual assault and adopt its own clear policy to encourage reporting. (Page 91)

19. The Panel recommends that the Academy ensure that the Academy Response Team is always proactively involved in cases in which the victim and potential witnesses are also alleged to have committed misconduct. The Panel also recommends that the Academy Response Team continue to remain involved in a case, in the event that a particular allegation is suspected to be false. (Pages 94)

20. The Panel recommends that the Air Force Office of Special Investigations Academy detachment participate fully in the recently established Academy Response Team and use it for informing and educating Academy leadership, victim advocates and CASIE representatives of their responsibilities and limitations. AFOSI's educational efforts should include programs that provide a basic understanding of how and why it takes certain investigative actions, and the benefits of timely reporting and investigation of all sexual assault incidents. (Page 99)

21. The Panel recommends that the Academy take measures to ensure that transportation to the hospital, and any other necessary logistical support, is always available to a cadet who chooses to receive a rape kit examination. In particular, transportation must be provided by an appropriate individual, such as the psychotherapist or Academy Response Team member, who will be discreet and can address the victim's emotional needs during the long car trip to the hospital. (Page 100)

## VIII. CONCLUSION

For nearly fifty years the United States Air Force Academy has been a model academic institution whose mission is to train and educate future leaders of our nation's armed forces. The institution's mission remains, yet its reputation has lost some of its luster as the school grapples with an institutional crisis that goes beyond its campus in the Rocky Mountains and extends to the halls of Congress and the Pentagon.

The Congress tasked this Panel to examine and investigate this misconduct whose roots, the Panel has found, have gradually grown to the foundation of the Academy and the Air Force. Though the magnitude of this crisis cannot be diminished, the Panel is confident the institution and its principled mission will survive for future generations.

The Panel has sought to help restore the institution's commitment to its cadets and the American people through substantive and constructive recommendations. This is an opportunity to strengthen an institution and help ensure it will have a safe and secure learning environment for all of its cadets.

The *Agenda for Change* is evidence that the Air Force, under the leadership of Secretary Roche and General Jumper, is serious about correcting the sexual assault problems that have plagued the Academy for a decade. The Academy's new leadership team already has implemented many changes to improve the immediate physical security of female cadets and more effectively respond to the needs of victims.

Despite these efforts, and those intended to address the underlying conditions that contributed to an environment in which sexual assaults occurred, the Academy and the Air Force must do much more. In addition to holding accountable those leaders who failed the Academy and its cadets, the Air Force must permanently change the Academy's institutional culture and implement command and oversight improvements that will identify and correct problems before they become engrained in the fabric of the institution.

Change will not happen overnight; nor will it truly be effective without a sustained, dedicated focus by Academy officials and senior Air Force leadership to alter the very culture of the Academy. The reputation of the institution, and by extension the Air Force it serves, depends on finding a lasting solution to this problem. Only then will the Academy restore its reputation and meet the high standards expected by the Air Force and our nation.

Through its work, the Panel found one thing to be certain: it is and should always be an honor to call oneself a cadet at the United States Air Force Academy.

## IX. APPENDICES

PUBLIC LAW 108—11—APR. 16, 2003

117 STAT. 609

**TITLE V—PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS  
AT UNITED STATES AIR FORCE ACADEMY****SEC. 501. ESTABLISHMENT OF PANEL.**

(a) Establishment.--There is established a panel to review sexual misconduct allegations at the United States Air Force Academy.

(b) Composition.--The panel shall be composed of seven members, appointed by the Secretary of Defense from among private United States citizens who have expertise in behavioral and psychological sciences and standards and practices relating to proper treatment of sexual assault victims (to include their medical and legal rights and needs), as well as the United States military academies.

(c) Chairman.--The Secretary of Defense shall, in consultation with the Chairmen of the Committees on Armed Services of the Senate and House of Representatives, select the Chairman of the panel from among its members under subsection (b).

(d) Period of Appointment; Vacancies.--Members shall be appointed for the life of the panel. Any vacancy in the panel shall be filled in the same manner as the original appointment.

(e) Meetings.--The panel shall meet at the call of the Chairman.

(f) Initial Organization <<NOTE: Deadline.>> Requirements.--(1) All original appointments to the panel shall be made not later than May 1, 2003.

(2) The Chairman shall convene the first meeting of the panel not later than May 8, 2003.

**SEC. 502. DUTIES OF PANEL.**

(a) In General.--The panel established under section 501(a) shall carry out a study of the policies, management and organizational practices, and cultural elements of the United States Air Force Academy that were conducive to allowing sexual misconduct (including sexual assaults and rape) at the United States Air Force Academy.

[[Page 117 STAT. 610]]

(b) Review.--In carrying out the study required by subsection (a), the panel shall--

(1) review the actions taken by United States Air Force Academy personnel and other Department of the Air Force officials in response to allegations of sexual assaults at the United States Air Force Academy;

(2) review directives issued by the United States Air Force pertaining to sexual misconduct at the United States Air Force Academy;

(3) review the effectiveness of the process, procedures, and policies used at the United States Air Force Academy to respond to allegations of sexual misconduct;

**APPENDIX A-1**

Legislation Appointing the Panel (Pub. L. No. 108-11, 117 Stat. 559 (2003))

(4) review the relationship between--

(A) the command climate for women at the United States Air Force Academy, including factors that may have produced a fear of retribution for reporting sexual misconduct; and

(B) the circumstances that resulted in sexual misconduct at the Academy;

(5) review, evaluate, and assess such other matters and materials as the panel considers appropriate for the study; and

(6) review, and incorporate as appropriate, the findings of ongoing studies being conducted by the Air Force General Counsel and Inspector General.

(c) Report.--(1) Not <<NOTE: Deadline.>> later than 90 days after its first meeting under section 501(f)(2), the panel shall submit a report on the study required by subsection 502(a) to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives.

(2) The report shall include--

(A) the findings and conclusions of the panel as a result of the study; and

(B) any recommendations for legislative or administrative action that the panel considers appropriate in light of the study.

#### SEC. 503. PERSONNEL MATTERS.

(a) Pay of Members.--(1) Members of the panel established under section 501(a) shall serve without pay by reason of their work on the panel.

(2) Section 1342 of title 31, United States Code, shall not apply to the acceptance of services of a member of the panel under this title.

(b) Travel Expenses.--The members of the panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the panel.

[[Page 117 STAT. 611]]

#### TITLE VI--GENERAL PROVISIONS--THIS ACT

Sec. 6001. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

This Act may be cited as the "Emergency Wartime Supplemental Appropriations Act, 2003".

## APPENDIX A-2

Legislation Appointing the Panel (Pub. L. No. 108-11, 117 Stat. 559 (2003))

**Glossary of Acronyms Used in this Document**

ACES	Academy Character Enrichment Seminar
AF/SG	Air Force Surgeon General
AFOSI	Air Force Office of Special Investigations
AOC	Air Officer Commanding
ART	Academy Response Team
ASP	AFOSI Agency Specific Program
BCT	Basic Cadet Training
C1C	Cadet First-Class
C2C	Cadet Second-Class
C3C	Cadet Third-Class
C4C	Cadet Fourth-Class
CASIE	Cadets Advocating Sexual Integrity and Education
CCD	Center for Character Development
CCQ	Cadet-in-Charge of Quarters
COMDTMIDNINST	Commandant of Midshipmen, U.S. Naval Academy Instruction
CPD	Center for Personal Development
DoD IG	Department of Defense Inspector General
FSC	Forensic Sciences Consultant
GAO	General Accounting Office
IG	Inspector General
JAG	Judge Advocate General
JASM	Chief of the Military Justice Division
LSSC	Life Skills Support Center
MDC	Midshipman Development Center
MTL	Military Training Leader
OPNAVNOTE	Chief of Naval Operations Notice
OPR	Office of Primary Responsibility
PAT	Process Action Team
PDD	Psycho-physiological Detection of Deception
SAAM	Sexual Assault Awareness Month
SAF/IG	Air Force Inspector General
SAF/MR	Assistant Secretary of the Air Force for Manpower and Reserve Affairs
SAF/MRM	Deputy Assistant Secretary of the Air Force, Force Management & Personnel
SASC	Sexual Assault Services Committee
SAVI	Sexual Assault Victim Intervention Program
SPOI	Security Policy Office of Investigations

**APPENDIX B-1**

## Glossary of Acronyms

STD	Sexually Transmitted Disease
TAC	Tactical Officer
TESSA	Trust-Education-Safety-Support-Action
UCMJ	Uniform Code of Military Justice
USCC	United States Corps of Cadets
USMA	United States Military Academy

## APPENDIX B-2

### Glossary of Acronyms

## Biographies of Panel Members

### Chairman Tillie K. Fowler

After a distinguished eight-year tenure in the U.S. House of Representatives, Tillie K. Fowler joined the Washington, D.C. office of Holland & Knight LLP as a Partner in 2001. She was elected to Congress in 1992 where she earned widespread bipartisan respect in defense and national security policy while representing Florida's fourth congressional district. She was a senior member of the House Armed Services Committee and House Transportation Committee. Fowler served six years as a member of the U.S. Naval Academy Board of Visitors and in 1997 she played an instrumental role in the congressional investigation into allegations that drill sergeants had assaulted trainees at the Army's Aberdeen Proving Ground. She was one of three lawmakers that comprised that investigative panel.

After serving only three terms, she was elected by her Republican colleagues as Vice Chairman of the Republican Conference—the fifth-ranking position in the elected leadership of the House of Representatives—making her the highest ranking woman in the U.S. Congress when she retired in January 2001.

In November 1999, Speaker of the House Dennis Hastert appointed her to his North Korea Advisory Group. In 2000, while chairman of the House Transportation Subcommittee on Oversight, Investigations, and Emergency Management, she introduced HR 4210, The Preparedness Against Terrorism Act. The bill would have established an office within the Executive Office of the President of the United States to coordinate the nation's terrorism preparedness effort. The measure passed the House on July 25, 2000.

Upon her departure from Congress, the Secretary of the Navy awarded Representative Fowler the Navy's Distinguished Public Service Award while the Secretary of Defense honored her with the Defense Medal for Distinguished Public Service. Most recently, Defense Secretary Donald Rumsfeld appointed her chairman of his Defense Policy Board Advisory Committee which she has served as a member since 2001.

Fowler currently holds a position on the Chief of Naval Operations Executive Panel and the Florida Domestic Security Advisory Panel on which Governor Jeb Bush asked her to serve following the September 11<sup>th</sup> terrorist attacks. Additionally, she recently completed a one-year appointment on the congressionally-mandated Commission on the Future of the Aerospace Industry. Fowler received both her Bachelors Degree and Law Degree from Emory University.

### **Lieutenant General Josiah Bunting III (Ret.)**

Lieutenant General Josiah Bunting III (Ret.) graduated third in his class from Virginia Military Institute (Class of 1963), where he was the Cadet Regimental Commander, member of the Honor Court, Captain of the Swimming Team and recipient of a Rhodes Scholarship. After receiving a B.A. and M.A. from Oxford University, he entered the United States Army in 1966. During his six years of service, he reached the rank of Major, with duty stations at Fort Bragg, North Carolina; Vietnam (9<sup>th</sup> Infantry Division); and West Point, New York, where he was an assistant professor of history and social sciences. His military citations include the Bronze Star with 2 Oak Leaf Clusters, the Army Commendation Medal, the Vietnam Honor Medal-2nd Class, the Presidential Unit Citation, the Parachute Badge, the Combat Infantry Badge and the Ranger Tab. General Bunting spent one year at the U.S. Naval War College as a professor and acting head of the Department of Strategy. During that year, he also finished the last year of a three-year fellowship in the Department of History at Columbia University before being named President of Briarcliff College, a women's college in New York. Following his four-year tenure at Briarcliff, he served for ten years as the President of Hampden Sydney College and then as the Headmaster at Lawrenceville School, a prestigious independent boarding school near Princeton, New Jersey. In 1995, after eight years at Lawrenceville, he was appointed a Major General in the Virginia Militia and the thirteenth Superintendent at Virginia Military Institute. Lieutenant General (Ret.) Bunting is also an accomplished author and has been published many times.

### **Anita Carpenter**

Anita Carpenter has been the CEO of the Indiana Coalition Against Sexual Assault, Inc. During her tenure at the Coalition, she successfully created the first homeless youth and sexual violence campaign to reach at-risk and homeless youth. She has been instrumental in establishing standards for sexual assault victim advocates, and currently is working with the State Legislators to pass a bill that would provide certification for advocates throughout the State of Indiana. In 2002, Ms. Carpenter worked with a committee of grassroots programs to complete the State Sexual Assault Plan for Indiana. She has a bachelor's degree in Political Science from Rhodes College in Memphis, Tennessee, and currently is working towards earning her Master's Degree in Arts in Sociology from the Crisis Prevention Institute. Ms. Carpenter's experience includes serving as the Executive Director for a residential treatment program for victims of domestic violence, the Human Resources Director for a rehabilitation facility for disabled adults and children, a Pre-Trial Release Counselor for the Federal Bureau of Prisons, a Consultant to the State of Indiana on Domestic Violence and a Crime Analyst for law enforcement.

## **APPENDIX C-2**

### **Biographies of Panel Members**

**Laura L. Miller, Ph.D.**

Laura L. Miller, Ph.D. is a Social Scientist at the RAND Corporation in Santa Monica, California. She received her Bachelor's Degree in European and Soviet Studies from the University of Redlands in 1989 and her Ph.D. in Sociology at Northwestern in 1995. She held a Post-Doctoral Fellowship for two years at the John M. Olin Institute for Strategic Studies at Harvard, and from 1997-2000 was an Assistant Professor of Sociology at UCLA. Dr. Miller has written numerous publications in the field of military sociology. Her article, "Not Just Weapons of the Weak: Gender Harassment as a Form of Protest for Army Men," (*Social Psychology Quarterly*, March 1997) won the Distinguished Article Award from the Sex and Gender Section of the American Sociological Association. She served as a consultant for the Secretary of Army's Senior Review Panel on Sexual Harassment in 1997, and for the Congressional Commission on Military Training and Gender-Related Issues in 1998-1999. Dr. Miller has conducted research with military personnel located in stateside bases and deployed in Somalia, Haiti, Macedonia, Germany, Hungary, Bosnia and Korea. Dr. Miller currently serves on the Army Science Board, the Board of Directors for the Center for the Study of Sexual Minorities in the Military and the Executive Council of the Inter-University Seminar on Armed Forces and Society.

**Major General Michael J. Nardotti, Jr. (Ret.)**

Major General (Retired) Michael J. Nardotti, Jr., graduated from the United States Military Academy, West Point (B.S., 1969), where he was a Cadet Regimental Commander, the Secretary of the Honor Committee, and an All-American wrestler. He was commissioned in the Infantry, successfully completed Airborne and Ranger training, and later served with the 1<sup>st</sup> Cavalry Division in Vietnam, where he was wounded in action. He subsequently earned his law degree from Fordham University (J.D., 1976) in New York City. He then served in numerous assignments as a Judge Advocate in Europe and the United States, concluding his 28 years of service as The Judge Advocate General, the senior military lawyer in the Army, from 1993 to 1997. His military awards and decorations include the Distinguished Service Medal, the Silver Star, the Bronze Star, the Purple Heart, and the Combat Infantryman's Badge. He joined the law firm of Patton Boggs LLP in 1997 as a Partner and has concentrated his practice in civil litigation, government contracts, and defense and national security matters. General Nardotti is a member of the District of Columbia and New York Bars and is admitted to practice before the U.S. Supreme Court and various federal courts of appeal and district courts. He also serves on the boards and advisory committees of several charitable and public service organizations in the National Capital Region.

### Colonel John W. Ripley (Ret.)

Colonel John W. Ripley (Ret.) graduated from Naval Academy with a Bachelor's of Science degree in electrical engineering and was commissioned a Second Lieutenant in the United States Marine Corps. Colonel Ripley served on active duty in the Marine Corps for 35 years, including two tours in Vietnam. Among his assignments were Sea Duty on the USS Independence; service with 2<sup>nd</sup> Battalion, 2<sup>nd</sup> Marines; 3<sup>rd</sup> Battalion, 3<sup>rd</sup> Marines (Vietnam); Headquarters, Marine Corps; Exchange Officer to the British Royal Marines; 3<sup>rd</sup> Commando Brigade (Singapore); Senior Advisor to the 3<sup>rd</sup> Vietnamese Marine Battalion; Marine Officer Instructor at Oregon State University; Administrative Assistant/Aide to the Chief of Staff (HQMC); Command of 1<sup>st</sup> Battalion 2<sup>nd</sup> Marines; the US Naval Academy; Command of 2<sup>nd</sup> Marine Regiment; and Command of the Navy-Marine Corps ROTC at Virginia Military Institute. His schooling includes the Marine Basic School, the Naval War College, Airborne, Scuba, Ranger, Jumpmaster, Amphibious Warfare, Mountain and Arctic Warfare Course and the Joint Warfare Course (Old Sarum, England). He holds a Master of Science degree from American University. Colonel Ripley's awards include the Navy Cross, the Silver Star, the Legion of Merit (2<sup>nd</sup> award), two awards of the Bronze Star with Combat "V", the Purple Heart, the Defense Meritorious Service Medal, the Navy Commendation Medal, the Presidential Unit Citation, the Navy Unit Citation, the Combat Action Ribbon, the Vietnam Distinguished Service Order, and the Vietnam Cross of Gallantry with Gold Star. Following his retirement in 1992, Colonel Ripley has served as the president of Southern Virginia College, the President of Hargrave Military Academy and currently serves as the Director of Marine Corps History and Museum and the Director of the Marine Corps Historical Center.

### Sally L. Satel, M.D.

Sally L. Satel, M.D., is a graduate of Cornell University (B.S.), the University of Chicago (M.S.) and Brown University (M.D.). From 1988-1995, Dr. Satel taught as an assistant professor of Psychiatry at the Yale University School of Medicine. In 1996, she was asked to serve the U.S. Senate as a professional staff member on the Committee on Veteran's Affairs. Dr. Satel is a practicing psychiatrist, a lecturer at Yale University School of Medicine and a resident scholar at the American Enterprise Institute. Her articles have been published in *The New Republic*, the *Wall Street Journal*, and the *New York Times*. In 2000, Dr. Satel released her book titled, *PC & M.D., How Political Corruption is Corrupting Medicine*. Dr. Satel is currently a staff psychiatrist at the Oasis Drug Treatment Clinic in Washington, D.C.

## APPENDIX C-4

### Biographies of Panel Members

## Panel Staff

### Professional Staff

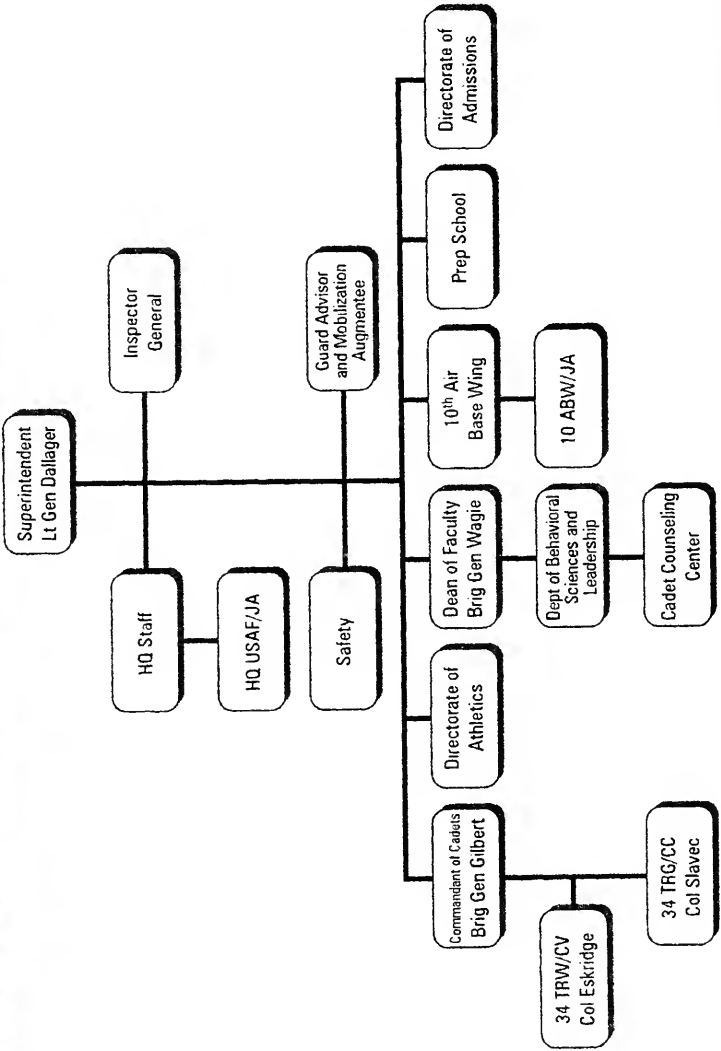
John P. Rowley III, Staff Director  
Partner, Holland & Knight LLP  
Sheila M. Earle, Designated Federal Official  
Acting Principal Director, DUSD (Military Personnel Policy)  
Christina M. Burmeister  
Michelle E. Crawford, MAJ, JA, USA  
Pamela A. Holden, CDR, JAGC, USN  
Hillary A. Jaffe  
Richard G. Moore  
Robert E. Reed  
Jonathan J. Skladany  
Donald J. Wheeler

### Public Affairs

R. Thomas Alexander  
Michelle Shortencarrier

### Administrative Staff

Ryan E. Alvis  
Brandi M. Henry, SSG, USA  
Myrtle E. Johnson



## APPENDIX E

Leadership Positions at the Academy Prior to the *Agenda for Change*

## Names and Roles of Individuals Discussed in Report

Allard, Wayne	U.S. Senator (R-CO)
Anderson, Lt. Gen. Edgar R.	Former Air Force Surgeon General
At Lee, William K.	Air Force Deputy General Counsel (National Security and Military Affairs)
Barnidge, Maj. Gen. Leroy Jr.	Former Director, Legislative Liaison, Office of the Secretary of the Air Force
Bier, Jennifer	TESSA
Carpenter, Anita M.	Panel member
Craven, Kelly F.	Deputy Assistant Secretary of the Air Force for Management and Personnel
Dallager, Lt. Gen. John R.	Former Superintendent, USAFA
Delaney, Dr. Lawrence J.	Former Acting Air Force Secretary
Dominguez, Michael L.	Assistant Secretary of the Air Force for Manpower and Reserve Affairs
Donley, Michael B.	Former Acting Air Force Secretary
Eskridge, Col. Robert D.	Former Vice Commandant, USAFA
Fogleman, Gen. Ronald R.	Former Chief of Staff, USAF
Fowler, Tillie K.	Former Congresswoman, Panel Chairman
Gilbert, Brig. Gen. S. Taco III	Former Commandant of Cadets, USAFA
Gray, Col. Debra D.	Vice Commandant of Cadets, USAFA
Guzman, Lt. Col. Alma, USAF (Ret.)	Victim Advocate Coordinator, USAFA
Hall, Lt. Col. Molly	Chief of Psychiatry at Andrews Air Force Base and psychiatric consultant to the Air Force Surgeon General
Hansen, L. Jerry	Department of Defense Deputy Inspector General for Inspection and Policy
Hawley, Maj. Gen. Bryan	Former Judge Advocate General of the Air Force
Hefley, Joel	U.S. Representative (R-CO); Vice-Chair, Acting Chairman of Board of Visitors, USAFA
Hoffman, Brig. Gen. Robert A.	Former Commander of AFOSI
Hopper, Maj. Gen. John D. Jr.	Former Commandant of Cadets, USAFA
Hosmer, Lt. Gen. Bradley C. USAF (Ret.)	Former Superintendent, USAFA
Huot, Lt. Gen. Raymond P.	Air Force Inspector General
Jackson, Lt. Col. Robert J.	Head, Behavioral Science Department, USAFA
Johnson, Jeh	Former Air Force General Counsel
Jumper, Gen. John P.	Air Force Chief of Staff
Kehoe, Lt. Gen. Nicholas B.	Former Air Force Inspector General
Kerr, Janet	TESSA
McPeak, Gen. Merrill A.	Former Chief of Staff, USAF; Former Acting Air Force Secretary
Miller, Laura L., Ph.D.	Panel member
Oelstrom, Lt. Gen. Tad J.	Former Superintendent, USAFA

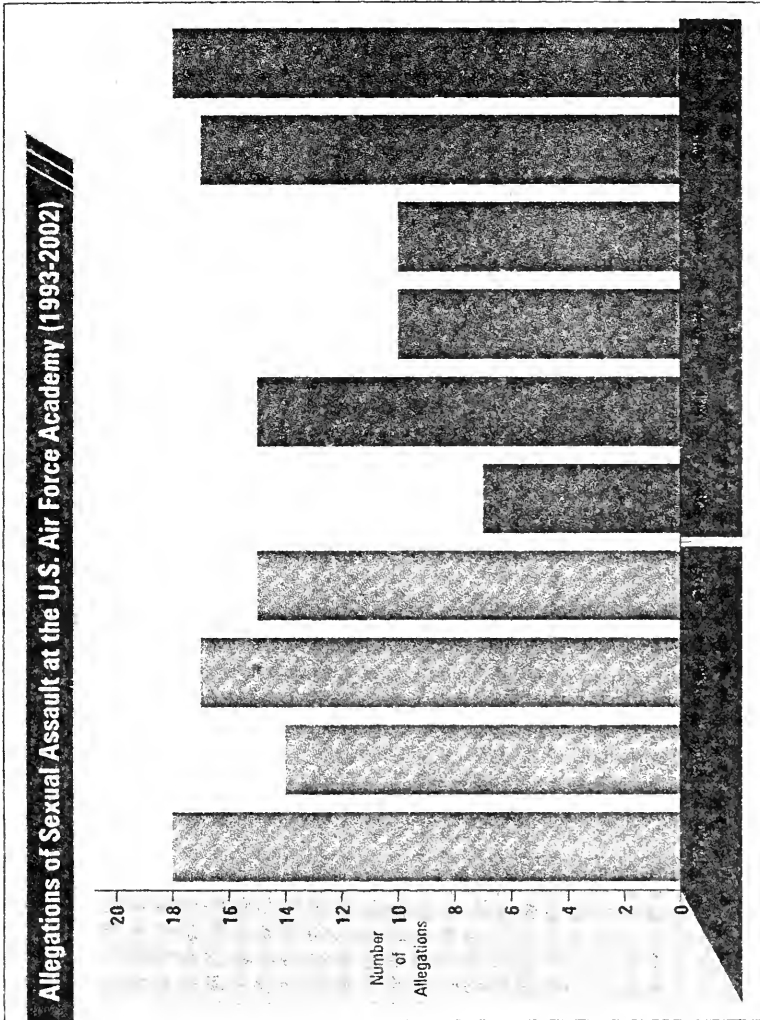
## APPENDIX F-1

Names and Positions of the Individuals Discussed in Report

Pamerlau, Maj. Gen. Susan L. USAF (Ret.)	Former Commander, Air Force Personnel Force Management
Peters, F. Whitten	Former Acting Air Force Secretary
Roadman, Maj. Gen. Charles H.	Former Air Force Surgeon General
Roche, James G.	Air Force Secretary
Rosa, Lt. Gen. John W.	Superintendent, USAFA
Rumsfeld, Donald	Secretary of Defense
Ryan, Gen. Michael E.	Former Air Force Chief of Staff
Schmitz, Joseph E.	Department of Defense Inspector General
Slavec, Col. Laurie S.	Former 34 <sup>th</sup> Training Wing Commander, USAFA
Spencer, Col. James W.	Director of Plans & Programs, USAFA
Stein, Lt. Gen. Paul E.	Former Superintendent, USAFA
Swope, Lt. Gen. Richard T.	Former Air Force Inspector General
Taylor, Brig. Gen. Francis X.	Former Commander, Headquarters AFOSI
Wagie, Brig. Gen. David A.	Dean of Faculty, USAFA
Walker, Mary L.	Air Force General Counsel
Weida, Brig. Gen. Johnny A.	Commandant of Cadets; Former Acting Superintendent, USAFA
Welsh, Brig. Gen. Mark A. III	Former Commandant of Cadets, USAFA
Widnall, Sheila E.	Former Air Force Secretary

## APPENDIX F-2

Names and Positions of the Individuals Discussed in Report



Source: Allegations of Sexual Assault (Calendar Year of Incident) (Including Allegations, Regardless of Substantiation) *Working Group Report*, at 71.

## APPENDIX G

Alleged Sexual Assaults Made by Cadets at the Academy Each Year, 1992-2003

**Air Force and Air Force Academy Leadership (1993 - Present)****Air Force Secretaries**

Michael B. Donley (Acting)	Jan 1993 - July 1993
General Merrill A. McPeak (Acting)	July 1993 - Aug 1993
Sheila E. Widnall	Aug 1993 - Oct 1997
F. Whitten Peters	Nov 1997 - Jan 2001
Dr. Lawrence J. Delaney (Acting)	Jan 2001 - May 2001
Dr. James G. Roche	June 2001 - Present

**Air Force Chiefs of Staff**

General Merrill A. McPeak	Oct 1990 - Oct 1994
General Ronald R. Fogleman	Oct 1994 - Sept 1997
General Michael E. Ryan	Nov 1997 - Sept 2001
General John P. Jumper	Sept 2001 - Present

**Academy Superintendents**

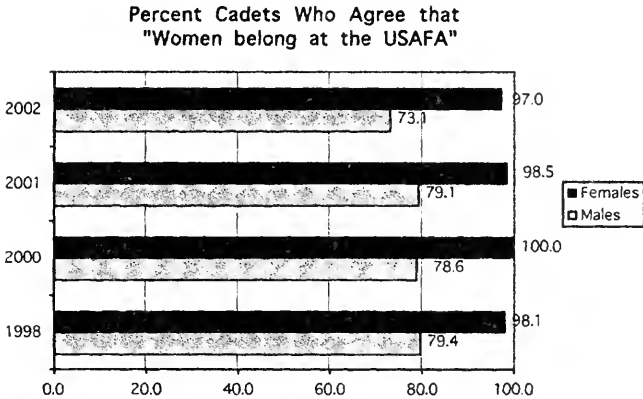
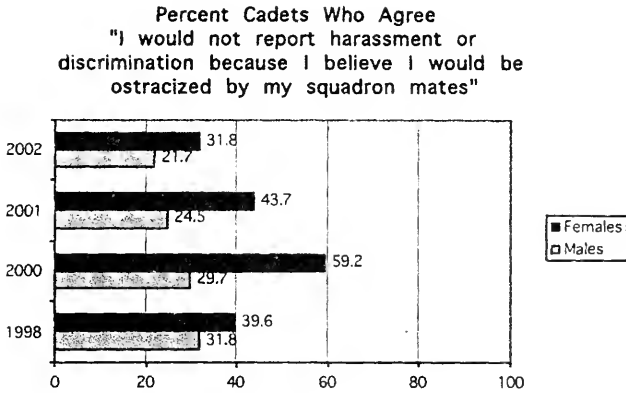
Lieutenant General Bradley C. Hosmer	June 1991 - July 1994
Lieutenant General Paul E. Stein	July 1994 - Aug 1997
Lieutenant General Tad J. Oelstrom	Aug 1997 - June 2000
Lieutenant General John R. Dallager	June 2000 - April 2003
Brigadier General Johnny A. Weida (Acting)	April 2003 - July 2003
Lieutenant General John W. Rosa	July 2003 - Present

**Academy Commandants of Cadets**

Major General Patrick K. Gamble	June 1993 - Nov 1994
Brigadier General John D. Hopper, Jr.	Nov 1994 - July 1996
Brigadier General Stephen R. Lorenz	Aug 1996 - June 1999
Brigadier General Mark A. Welsh III	June 1999 - Aug 2001
Brigadier General S. Taco Gilbert III	Aug 2002 - April 2003
Brigadier General Johnny A. Weida	April 2003 - Present

**APPENDIX H**

Air Force Secretaries, Chiefs of Staff, and Academy Superintendents and Commandants of Cadets from 1993-2003

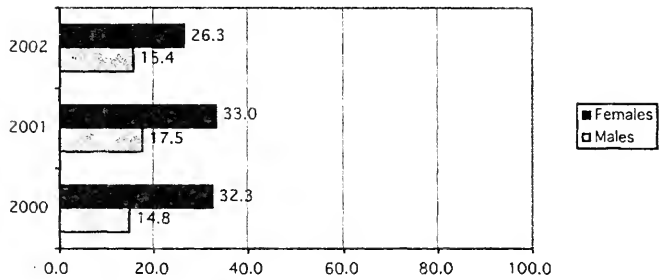


Source: Social Climate Survey Data Provided by USAFA Department of Behavioral Sciences and Leadership. Graphs Prepared by Laura L. Miller, Ph.D. (Panel Member)  
 Sample: 287 men, 53 women in 1998; 243m and 71 in 2000; 1722m and 375w in 2001; 1580m and 369w in 2002.

## APPENDIX I-1

Cadet Responses to Key Survey Questions

Percent Cadets Who Agree  
 "I will not personally confront harassment and  
 discrimination because I have witnessed the  
 negative treatment toward people who confront  
 the alleged offender(s)"



Source: USAFA Department of Behavioral Sciences and Leadership

Sample: Not asked in 1998; 243m and 71w in 2000;  
 1722m and 375w in 2001; 1580m and 369w in 2002.

## APPENDIX I-2

Cadet Responses to Key Survey Questions

Dall

Oelstrom Era

Stein Era

gations  
99417 Allegations  
in 199515 Allegations  
in 19967 Allegations  
in 199716 Allegations  
in 199810 Allegations  
in 199910 Allegations  
in 200017 Allegations  
in 2001

March

Big Gen Hoffman  
initiates review

April

Multidisciplinary  
headquarters  
group reviews proposal  
on USAFA policy

April - June

Lt Col Hal investigates  
sexual assault

June

Gen Anderson briefs Gen.  
Fogelman about problems  
at the Academy

March

CAO report

1995

Gen Stern attended victim  
underground support  
meeting

1994

und-victim  
formed  
early  
report

Spring

Social Climate Survey -  
low response rate

May

Char. Day Review Panel  
submits report

August

Air Force IG receives  
allegations of sexual  
assault cover-up

Fall

Social Climate survey -  
15% - victims of  
sexual assault

December

"Top SGT" briefing  
"We have a problem"

Late 1999

AFOSI raises concerns  
about reporting policy

2001

SASC warns  
August  
Cans Report is released

2001

January 2000 - May 2001  
Social Assault Policy  
Working Group reviews  
the Academy's reporting  
program

November

Gen Tracie and  
Gen Dablage  
discuss AFOSI concerns

April/May

Academy and AFOSI agree  
in principle on reporting  
requirements

1997/1998

Character Dev. Review  
Panel commissioned

May

Surg Gen grants waiver  
leadership about waiver  
of reporting requirement

July

Inspection 51-201  
implemented

1997

Alcohol Use Process  
Action Team initiated

1997

Social Climate Process  
Action Team ceases

1996/1997

Cadet Counseling Center

1996

Sexual Assault questions  
added to Social  
Climate Survey

1996

Sexual Assault Awareness  
Month recognized

1994/1995

AFOSI capability upgraded

February

Social Climate Process  
Action Team initiated

November

Sexual Assault Services  
Committee established

Chairman WARNER. I thank you for an excellent report, and I ask that in the course of the questioning—the questions can be directed to any member of the panel—where it is directed to Chairman Fowler, if there are other members who want to respond to that Senator's question, please raise your hand. Hopefully, the Senator will permit you to respond.

Now, I am listening intently. You said that you were asking the Inspector General to go back and review the issue of accountability. I heard the word "former leadership," which I am trying to find the use of that word "former." Is it in your report at all?

Ms. FOWLER. The recommendation itself is on page 101.

Chairman WARNER. I am looking at that.

Ms. FOWLER. Then the section that establishes that starts on page 37.

Chairman WARNER. The panel recommends that the DODIG conduct a thorough review—go ahead.

Senator LEVIN. What page were you on, Ms. Fowler? I am sorry.

Ms. FOWLER. The accountability section starts on page 36 of the report and goes through page 42. The actual recommendation is on page 42 and it is also in the recommendations section on page 101. We put all the recommendations in one section for you also, so they are throughout the report and there.

Chairman WARNER. Now wait a minute. Is it in here, the word "former"? I am trying to go through a lot. I have read it through once.

Ms. FOWLER. I do not think it is.

Chairman WARNER. I do not think it is, either, and that is why I find it very significant that this morning you include it in your opening statement, whereas it is not in the report.

Ms. FOWLER. The reason I did, Mr. Chairman, is because of some of the press interpretations over the past day or so of what is in our report, that we as a panel wanted to make it clear that our primary concerns, if it was not clear enough in this report, were with prior leadership. We have uncovered nothing to lead us to believe that either Secretary Roche or General Jumper were doing anything to not respond to these concerns. As soon as they had the information, as far as this panel is concerned in our interactions with those individuals, they moved in a timely manner. The Agenda for Change, while not perfect, was certainly a great beginning. It was needed at that time because they could not wait until after school began. They made it very clear that it was a blueprint, that it was an evolving process. They have made changes to it themselves since it was issued.

So as far as our relationship with both of those leaders, it has been a very open, positive relationship. They have been very forthcoming with us whenever we asked for information. We have met with both individuals and we have not had any questions as far as this panel is concerned about their performance.

Chairman WARNER. But it is for those reasons that you now explicitly exempt them from your recommendations—

Ms. FOWLER. It is up to the DODIG to decide who he is going to investigate, not up to this panel. But we wanted, since there had been some expressions otherwise in the press—

Chairman WARNER. This is an important point. This committee is faced with a very unique issue right now. I have been privileged to be on this committee for 25 years, served with many chairmen. My distinguished ranking member and I have to determine when we are on notice. For example, the Air Force this morning issued a clarification. All kinds of clarifications are coming out. But they say that: "The DOD Inspector General, the Air Force Inspector General, and the recently formed Executive Steering Group are examining other aspects of the sexual assault situation at the Academy and related Air Force headquarters oversight."

As I read that, that does not exempt the current occupants.

Ms. FOWLER. As I said, I cannot speak for the Inspector General or for the Executive Steering Group.

Chairman WARNER. I am not suggesting that you are.

Ms. FOWLER. All I can speak for is this panel, is all that we can speak for, is for these seven members of this panel. It is certainly up to the Inspector General and to the Executive Steering Group. When General Jumper appeared before us in late July, he made it clear that there was still an open investigation ongoing as to the immediate past leadership at the Academy, General Gilbert and Colonel Slavec. So we certainly refer to that in our report, because he made it clear that was still not complete.

Chairman WARNER. At this time might I solicit any other views on the panel. Do you concur in the chairwoman's statement regarding what I perceive as an addition to the direction to the Inspector General, that only the former leadership is to be examined, not the current? I observe that the current leadership had been in office for well over a year plus while these situations and allegations were continuing to accumulate.

This is of great concern to this Senator. I have to express that to you. When I read your report, it seemed clear to me that you asked for the IG to look across the board at the subject of the accountability at the headquarters. Specifically, you took issue with the working group under the General Counsel, in which you said: "The panel is concerned about the seeming inability of the Air Force to adequately investigate itself. While the Air Force General Counsel's working group conducted a thorough investigation of the Academy, it completely failed to address one of the most significant contributors to the current controversy, ineffective Air Force oversight at the leadership."

I find this in conflict. I am trying to move around very quickly because I thought I had it well organized in my mind until you inserted the word "former."

Ms. FOWLER. Again, we cannot direct the Inspector General as to whom he chooses to investigate. But what we wanted to make clear this morning—and I will let some of the other members speak to this also—was that as far as our investigation was concerned and our dealings with the current leadership, both at the Academy and at the Air Force headquarters, they have been very receptive, they have furnished us any information we needed, they have moved forward on trying to make change. But again, it is up to the Inspector General.

Now, as far as the working group report goes, it was a very well done report as to what was in it. Our concerns were what was

omitted, that there were omissions in that report that raised questions in our mind about its complete coverage.

Now, I saw that same release this morning. Our question is, if you are going to do a complete review and as you uncover these facts, you would think it would have been the responsibility of the working group to review them.

Chairman WARNER. I would like to ask if other panelists were aware that we were now going to be advised this morning of a rather significant departure from what is written in the report with regard to the oversight of the Air Force headquarters? Does anyone else wish to address this? Colonel Ripley, do you? You understand the word "accountability" in the military.

You come from the school that Senator McCain and I came from. Even though the captain of the ship is deservedly getting a night's rest in the bunk, if the ship runs aground, he is accountable. Am I not correct in that?

Colonel RIPLEY. Correct, sir.

Sir, I would respond by saying—and of course I am one panel member. I am one American citizen. But I think I saw and I can represent what a lot of us feel. I have served as a marine for 35 years active duty. I have commanded over 10,000 marines in every situation imaginable.

I have heard this characterized as a failure of leadership. Indeed it is, but I would emphasize or approach it differently. I think this was a cataclysmic collapse, an absence of leaders taking responsibility when the signs were everywhere. The emphasis seems to be on current leadership, but the fact is this happened over a period of time without question, going back 10 years and more.

Using my past, which you are familiar with, the enemy was in the wire, the ship was heading for a reef in broad daylight, and nobody read the signals. It is too late to have abandon ship drills when you are on the reef, or to try to close the gap, the breach in the outpost. The signals as we came to see it in our hearings and our individual questions that we asked virtually everywhere, but especially in Colorado Springs, it just washed over you like a wave. People simply ignored it.

They claimed that there are no systemic problems here. I disagree with that 100 percent. I think the system sustained it.

Chairman WARNER. I thank you, Colonel. General Bunting, do you have a comment? You have given a lifetime of service in the military.

General BUNTING. I would concur in what Colonel Ripley has said, sir. We did find in fact a systemic breakdown in supervision, in accountability, in responsibility. But I would not confine what we found to the leadership that Colonel Ripley was discussing. We found it at every conceivable level.

Let me give a couple of examples if I may. We heard repeatedly that assignments at the grade of lieutenant and captain and major to the positions of air officer commanding, the tactical officers, the young officers who were assigned to work with the cadets, that those assignments were not routinely given to the ablest young role models that the Air Force could furnish, but rather they were not taken particularly seriously and many officers who were assigned

to those positions were not regularly on duty discharging their responsibilities in a way that I think a tactical officer should.

At the other end of the spectrum, we found the Board of Visitors was singularly negligent in the discharge of their responsibilities. We found over the last 10 years that the average attendance at the single board meeting that was held every year was less than 50 percent.

So when we use the word "systemic," we are using it very carefully. There was a breakdown in leadership at every conceivable level.

Chairman WARNER. General Nardotti, you have also had significant military experience.

General NARDOTTI. Let me answer your question directly. I concur with the chairman's view.

Chairman WARNER. The question before that I propounded to the chairman is the insertion now in the opening statement of the word "former," which modifies the recommendation that you put in the written report. Is it the consensus of the panel that the existing leadership should not be reviewed by the IG? I guess that is the question before me.

General NARDOTTI. I will speak for myself. I concur with Ms. Fowler on this point. That was the understanding of the panel, that what we focused on was the leadership over time. We understand certainly that a year can be considered a long time, but in relative terms and in terms of the opportunities that leadership prior to that of the current top Air Force leadership, they had more time, an ample amount of time in their tenures, with systems in place that should have given them a better indication that there was a problem that needed to be addressed.

Certainly the timeframes—we recognize that perhaps the timeframes for the people at the Academy that might be held accountable would be shorter timeframes, but that is logical because they are more directly involved with the problem and the need for solutions.

Chairman WARNER. I thank you.

General NARDOTTI. I would also point out that at the press conference the other day when Congresswoman Fowler explained what we meant by the accountability she did make the point that we are referring to the past leadership.

Chairman WARNER. Thank you. My time has expired.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

I want to just clarify this recommendation in my own mind. It is the same one that Chairman Warner referred to. On page 42 where you recommend that the DODIG conduct a thorough review of the accountability of Academy and Air Force headquarters leadership, that review by the DODIG was taking place or was initiated before you came into existence, is that not correct? Was it not this committee which requested the DODIG to do a thorough review?

Ms. FOWLER. Senator, my understanding was that initial DODIG review was of the individual cases at the Academy and to make determinations as to whether each of those was handled in an appropriate manner, whether the results of those were appropriate, the

procedures appropriate, and any that were not, then they would make recommendations on them. Since that time, the DODIG has expanded that investigation, just in the past couple of weeks. But it initially started out really as a review of individual cases, which we were not to do. That was not our role. It was the Inspector General's role.

Senator LEVIN. Basically, the DODIG will conduct a thorough review of headquarters leadership as requested, and if this panel requests or anybody else appropriately requests the DODIG to look at current as well as past leadership then that is what the DODIG will do.

Ms. FOWLER. Yes, sir.

Senator LEVIN. It seems to me that we should make it clear, Mr. Chairman, that we are not excluding from the DODIG the review of current leadership in their process. That is not your decision; that is our decision.

Ms. FOWLER. I agree with that, and that is why I made clear, we are not officially excluding anyone. We are just giving our opinion based on our examination to date, but it is not our role to officially exclude or include anyone. That is really, as you said, the role of Congress and the role of the Inspector General.

Senator LEVIN. Right. So that even though you did not in your review see anything which you found to represent a deficiency or a failure on the part of current leadership, that review is taking place now by the IG. It seems to me, Mr. Chairman, we should make it clear most importantly to the DODIG that we expect them to include current leadership just so that it is thorough and complete.

Chairman WARNER. I share those views.

Senator LEVIN. That it is not based on your report, but just based on a desire that we not exclude anybody from the DODIG. It is going to be given to us hopefully by December, as I understand it. Where did I get that date from? We do not know when it is?

Chairman WARNER. We have heard several dates.

Senator LEVIN. All right. But we ought to urge the DODIG, obviously, to expedite this review because of the pendency of that nomination. All right, so that is something we can clarify.

General NARDOTTI. Senator, may I add to that, to this point. The reason we have placed so much emphasis on the accountability of the past leadership is we believe that there was an assumption early on that, because prior administrations, military and civilian, are gone, they are either retired or they have left their positions, that there was simply nothing that could be done.

We were unwilling to accept that. We understand, and we have said this in the report, that there are certainly great limits on what you could do to those who are long gone from the positions. But we believed it was extremely important to have a comprehensive look at the past leadership, determine whether there were failures, for two reasons.

Number one, if there were some things done wrong, even at the highest levels, even if you cannot do anything of great substance to an individual in the way of holding them accountable, at least completing the record as to whether or not they met the extraor-

dinarily high standard of performance that is expected of people in those leadership positions, we think that is important for the record. We think it is important for the future leadership to understand that merely because you leave the position does not mean that all is gone and forgotten, that there is a history here and there will be accounting at least through history.

We also thought it was important for the immediate past leadership that was removed from the Academy to place this in the proper context. They were not the only leaders who failed in this instance, in the judgment of this panel. Even if it is simply a matter of making a matter of record that other leaders had similar evidence before them and failed to act, that they should have taken those kinds of actions.

It may be more of an historical accounting, but we think that is important to put the problem in proper context and to draw the correct lessons for leadership in the future.

Senator LEVIN. Thank you.

One of the points in your report is as follows: that the Air Force General Counsel attempted to shield Air Force headquarters from public criticism by focusing exclusively on events at the Academy. You disagreed with the General Counsel's conclusion that there was no systemic acceptance of sexual assault at the Academy or institutional avoidance of responsibility, to use your words.

Now, is there any responsibility on the part of Secretary Roche, as the individual who directed, reviewed, and approved the General Counsel's working group report, for its failure to address leadership failures at Air Force headquarters?

Ms. FOWLER. We could not find any, Senator. The Air Force General Counsel review was done independently and, while the Air Force General Counsel does work for the Secretary of the Air Force, it is my understanding the Secretary of the Air Force did not intervene in that report, did not try to direct it, that this was a staff report that was delivered to him by the Air Force General Counsel.

As I said earlier, while we think the contents of that report are well done, as we did our investigation we kept uncovering time and again a lack of information in there about Air Force leadership accountability. We are talking about over the past 10 years. There were members of that working group, Mr. Kip Atlee, who chaired a task force on this issue within the Pentagon in 2002 and 2001, and none of the information from that task force was included in their report. The Air Force IG was part of one of those task forces. That was not included in the report.

So what we have just denoted is our concern over omissions from that report. We found no evidence that the Secretary had any involvement in the creation of that report or what was in it. It was presented to him as a staff report from the Air Force General Counsel.

Senator LEVIN. Just to finish that one line of questioning, when you say that the Air Force General Counsel attempted to shield, that is critical of the Counsel doing so?

Ms. FOWLER. It is.

Senator LEVIN. But what you are saying is that that does not imply, is not intended to imply or suggest any direction to do that by headquarters?

Ms. FOWLER. We would have said that if we had thought so. But all we knew was that the Air Force General Counsel did not include what we considered critical information in her report.

Senator LEVIN. But that was not at the direction, implied or otherwise, of headquarters?

Ms. FOWLER. We found no evidence of that.

Senator LEVIN. Thank you.

Thank you, Mr. Chairman.

Chairman WARNER. Did you find any reason why she did on her own initiative?

Ms. FOWLER. No, we did not, other than, you know how you talk behind the scenes with people, whether she wanted to please people or whether—now they are saying it was not in her purview. But to me if you are doing a thorough report—and part of the problem you will see from this timeline is time and again studies were conducted, but they became only partial studies. If you are looking at the problems at the Air Force Academy, which she was doing, you should be looking at the whole picture, and part of the picture which people on that working group were aware of were problems with the leadership at the Air Force over those 10 years. I mean, there were members of that working group who had chaired studies of that very issue and yet they did not bring that information to the working group nor reveal it in their report, and that did cause us to raise some questions.

Ms. Walker herself, it is my understanding, did not know about Mr. Atlee's involvement in the earlier study until about 6 weeks or so before her report was released. So I am not blaming Ms. Walker on all of this. I think she had a lack of information on some of the things she needed to know.

Chairman WARNER. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I want to thank the members of the panel for a really thorough and outstanding job, and I thank all of you for your great work as well as your previous service to the country.

Ms. Fowler, on March 12, 2003, according to a Los Angeles Times story, "Air Force Secretary James Roche on Tuesday rejected calls to open his probe of sexual misconduct at the Air Force Academy to outside investigators, saying the problem was best handled internally. 'My Harvard Business School training is you do not turn to outsiders; you study something yourself, you master it yourself, so that you know what you are talking about and you can lead,' he said in an interview with the Los Angeles Times."

If Secretary Roche's view had prevailed at that time, we would not have had your outstanding work.

Over a long period of time, this issue was discussed. In 26 March 2003 there was a press conference held by Secretary Roche and General Jumper: Question: "Have you in any way reprimanded or disciplined at all the leaders who are [inaudible]? What do you say to critics who say you are going too easy on these people? You just said a second ago these people may have been responsible." Secretary Roche: "The current group cannot be held responsible for ev-

everything that occurred in a 10-year period, certainly over a period longer than 10 years. To hold someone accountable means that there are two sides to a story, and they have a side as well. We have looked at it. We now look at it under the circumstances, and they might have been more clairvoyant, they may have been sharper, there may have been a survey they should have acted upon, but to hold them accountable per se with what we now know, no."

Is that pretty much in keeping with your conclusions?

Ms. FOWLER. No, it is not, Senator. While I cannot speak for the Secretary, all we can say is that once this panel was established the Secretary was very forthcoming—

Senator MCCAIN. Of course, you know why the panel was established?

Ms. FOWLER. Yes, I do.

Senator MCCAIN. Because of the actions of Congress—

Ms. FOWLER. Exactly.

Senator MCCAIN.—after the Secretary of the Air Force had said, as I quoted to you, that that was not necessary.

Ms. FOWLER. All I can assume, and, again, I did not even meet Secretary Roche until he testified before our panel on June 23. I had never met him or talked with him until then. But I would think that after he became more aware of the seriousness and depth of this problem he began to change his views.

Certainly once you established this panel, we never found the Secretary to be any less forthcoming. I mean, he came forward. In fact, I think some staff of his did not want him to come testify before us. He came and testified. Any time we needed information, he instructed his staff time and again to give us whatever we wanted. So we found the Secretary to be very open with us.

Senator MCCAIN. The fact remains that you would not be in existence if it had been his view had prevailed over that of the panel.

Ms. FOWLER. Right, the wisdom of this committee established this panel.

Senator MCCAIN. I am pleased that he had cooperated with the panel.

Of course, the working group report has been somewhat discredited by your recommendations; is that correct? You are in disagreement?

Ms. FOWLER. We cannot agree with the statement—and I will paraphrase it now—when they said there was no systemic acceptance of this. When you have roughly 142 known allegations of sexual assault happening a year over a 10-year period, if that is not a systemic problem, I do not know what is.

Senator MCCAIN. Let me be specific. In your report you say: "In June 2003, after completing her investigation of sexual assault at the Academy, Air Force General Counsel Mary L. Walker released The Report of the Working Group Concerning Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy ("Working Group Report"). The Working Group Report covers many aspects of cadet life, Academy policies and sexual assault reporting procedures in place at the Academy during the last 10 years. However, it avoids any reference to the responsibility of Air Force headquarters for the failure of leadership which occurred at the Academy."

It seems to me that that is a fairly large omission.

Ms. FOWLER. It was. That is why we pointed it out.

Senator MCCAIN. Thank you. "The panel believes that the Air Force General Counsel attempted to shield Air Force headquarters from the public criticism by focusing exclusively on events at the Academy." I would say that is a little larger than a minor disagreement if the report, in your words, "attempted to shield Air Force headquarters from public criticism by focusing exclusively on events at the Academy." I would say that is a comment of the utmost seriousness.

Ms. FOWLER. As you will see in our report, we documented several known facts that were not included in the working group report and we questioned why they were not. We had a much smaller staff and a lot less time to investigate than did the General Counsel working group. Our question was, why were these things that we uncovered that we felt were important to culture and climate, what was occurring over those 10 years—a lot of it is leadership. It is failure of leadership and it is failure of command when these types of things are occurring. It is all about leadership.

Senator MCCAIN. General Bunting, is it not a fairly serious charge to say that the panel believes that the Air Force General Counsel attempted to shield Air Force headquarters from public criticism?

General BUNTING. It is a very serious charge and it is very seriously meant.

Senator MCCAIN. Do you think it deserves further scrutiny?

General BUNTING. Sir, it does indeed.

Senator MCCAIN. General Nardotti, would you agree with that?

General NARDOTTI. I would agree with that, and the General Counsel works for the Secretary of the Air Force, so we would consider it his responsibility to take the information that this panel has now made available to him with regard to the working group report and take appropriate action.

Senator MCCAIN. Again, I will try not to repeat the questions asked by my colleagues. It is an outstanding report and one that I think for its candor is really a signal achievement, which I think is a remarkable performance on the part of the panel. But I think to stop accountability at previous leaders is something that I do not quite understand, particularly when before this committee the Secretary of the Air Force stated—and I would be glad to quote you and send you the transcript—that there was no need for discipline to be taken against current leaders at the Air Force Academy and that he did not intend to do so, and also that there was no need for an independent investigation.

Those are facts, the testimony before this committee and public statements by the Secretary of the Air Force. So I am curious why we would stop.

My time has expired. I thank you, Mr. Chairman.

Chairman WARNER. Senator, I thank you for those very probing questions. It is the intention of the chairman, in consultation with the ranking member and other members of the committee, to consider bringing before this committee in open session the Air Force General Counsel. I happen to have made an acquaintance with her in the course of the advise and consent proceedings.

The Senate confirmed her because of her very considerable professional accomplishments, and I think she should be given a chance to explain this. I do not wish to have this counsel or someone else be a fall guy, to use a word, without the opportunity for them explaining this.

I think your panel made some very important, critical determinations, and this committee is going to probe into this very carefully. Thank you.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Let me commend the panel for excellent work. I had the privilege of serving with Congresswoman Fowler in the House, and she has done her typical fine job. General Bunting was my instructor at West Point and General Nardotti was 2 years ahead and represents a distinguished graduate of West Point. I think what you have done is a great service, not only to the Air Force Academy and the Air Force, but for all the military, because the effectiveness of any military organization rests on confidence in your comrades. That is based on an ethic of selfless dedication one to another, not selfish exploitation. I cannot think of more gripping examples of exploitation than what you have catalogued in your report. No amount of technology or talent will make up for that ethical lapse.

So what we have to do is really make this a serious priority, not just at the Air Force Academy but throughout the military. I can assure you that your efforts will be translated to West Point. I have already sent your report there. At this weekend's meeting of the Board of Visitors we will discuss it in detail, and thank you for your service.

One recommendation you have made in your report is to expand the search for the dean outside the faculty of the Air Force Academy. But I would note, too, that one of his functions is to operate the cadet counseling center. That is, I think, the place where most of the information became available, which apparently he, or at least allegedly, ignored.

Is it also a recommendation or could you expand on the notion of taking that function away from the dean?

Ms. FOWLER. No, Senator, we did not do that. But we do have recommendations in here as to a restructuring of that counseling center; we do think it needs to be restructured. It needs to have licensed clinical psychologists that are running it, it needs to increase its staffing, and it needs to also have better trained people as part of that staff.

So we do have some specific recommendations as to the center itself. The center really is run by someone there at the center, but it reports to the dean of the faculty. He had the information that the center had and that caused us concern, that he had that information, he had the results of the surveys every year, but never suggested any actions.

Senator REED. Thank you.

There is another major issue that you have raised. Everyone has spoken about it, and that is the culture. In fact, I think the essence of your recommendations is the culture has to change. One of the most glaring statistics is the fact that 25 percent of men there still

deny the appropriate role of women at the Academy and in the Service.

I wonder if you are recommending or are prepared to recommend that those surveys be done in a systematic way to determine, not just at a snapshot, but as cadets enter and progress, because again I think there is a real question in my mind whether they bring those attitudes to the Academy or the culture of the Academy develops those attitudes. I wonder if you might comment, and I would open it up to the rest of the panel, too.

Ms. FOWLER. I would like a couple of them to comment.

The Air Force has its own survey center, which is responsible for developing professionally-done surveys. We do not understand why the Academy, if they thought these were unscientific, never turned to their own survey center to develop ones that they considered scientific. But we have suggested that these be done in a different, better manner than they have been in the past.

I would like to ask Dr. Laura Miller, who really went through the surveys since 1998 at the Academy and compiled them and had some interesting information on those.

Dr. MILLER. The Academy could have done a comparison like that, because they offered some of the same questions on the survey year after year after year after year. So they could look at a particular class and see what were the responses that they gave as freshmen and what were the responses that they gave as seniors.

They did very cursory analysis of their findings, dismissed them as invalid, and never corrected the problems with the survey in administering them again. I should point out that these climate surveys address sexual assault, alcohol abuse, gender, the gender climate in general, race relations, religious discrimination, and differential treatment perhaps between athletes. So these are surveys that could provide a wide range of very important information to the commanders.

Senator REED. Anyone else?

General BUNTING. I would like to respond.

Senator REED. General Bunting, please.

General BUNTING. A couple of days ago the question was asked, is there some point in the admissions process in which young male applicants to the Academy can be asked questions about their views of women in the Services, whether women should be commissioned, whether women should be at the Air Force Academy. I think that is probably an idle and a useless question. My own view is that the culture there, as it were, infects them once they get there.

One of the great things about the American Armed Forces and the Academies is that the kids that go there are us. They are not kids who have spent their life dreaming of being military commanders and fighters. They are a wonderful representation of this country. I have no doubt that overwhelmingly the young men that go to the Academy go with the same attitude towards young women that most of us have.

This is plainly a cultural problem that happens there. I might also observe that we have a tendency to dwell on diagnosis more than on prescription here, and we keep talking about the general and the colonel. But this is a community of 6,000 or 7,000 people,

including a faculty of 560, and to change that culture is going to take much more than the actions of the most brilliant and dedicated general officer. You have to have a huge systemic change, again particularly, it seems to me, among the young officers who are assigned there. Those are the ones that the cadets see every day. I also think the faculty of the institution should be much more heavily involved in the cure than it is right now.

Senator REED. Thank you, General.

General Nardotti.

General NARDOTTI. I would like to comment on the culture issue. I think for incoming cadets a lot of attitudes have to be changed. There are standards there that they will find nowhere else. They have an honor code. They have to unlearn some prior bad habits and adjust their standards. Their attitude toward the role of women in the Armed Forces is something that, regardless of how they felt about that before coming in, is something that they have to learn through training and leadership development why it is that women are there, in the numbers that they are there.

I view this as an issue, for those 25 percent of the cadets who feel that women do not belong there. They fail to understand, and the Academy has failed to teach them, how it is that women are at the Academy and in the Services in the numbers that they are. It was not based on some abstract notion of diversity to achieve certain goals. It was a very well thought through and deliberate decision to use women in a way that they had not been used before, in order to make the volunteer force a success.

I think it is a mistake to focus too much on the fighter pilot example and say, well, we have women fighter pilots, therefore they are the same as the men. One percent of fighter pilots in the Air Force are women. That is not the point.

Women do many important things in the Air Force other than being fighter pilots, and they do many important missions in other Services. They add value and they have contributed significantly to the success of the volunteer force over time. The force we have today is the best we have ever had. They need to learn that lesson and they need to understand that these are people that together, the men and women who are there, are going to serve together shoulder to shoulder on extraordinarily important missions. The attitude that some of these cadets have apparently maintained is, again, it is a sensitive and difficult leadership development challenge, but they have to address it.

Senator REED. Thank you very much.

My time has expired. Again, thank you for your wonderful work.

Ms. FOWLER. Thank you, Senator.

Chairman WARNER. Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman. First, I would like to insert my opening statement into the record.

[The prepared statement of Senator Allard follows:]

#### PREPARED STATEMENT BY SENATOR WAYNE ALLARD

Thank you, Mr. Chairman. I would like to commend you for your leadership on this issue. I have had the privilege of working with you on this issue from the beginning, and because of your interest, I believe our hard work is starting to pay off.

Approximately 5 months ago, Congress created the Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy. The driving force be-

hind this panel was the Air Force's perceived inability to hold senior officials accountable for their failure to effectively address the growing number of sexual assaults at the Academy. As it turns out, our concerns have proven to be justified. Unfortunately, as the panel has indicated in its report, it appears that we have only begun to scratch the surface.

I believe the panel did an outstanding job given its 3-month deadline and its limited access to information from the Air Force. Chairman Fowler, you and the other panel members are to be commended for the fine work you have done.

The panel accomplished what many of us on this committee were hoping the Air Force would do on its own: to identify those responsible and hold them accountable. Because of the panel, we have discovered that the Air Force officials and high-ranking Academy officials have known about the sexual assault allegations since 1993. Because of the panel, we found out that four Academy officials failed in their duties, including one that is still at the Academy. Sadly, as the panel's report has noted, "the Air Force General Counsel attempted to shield Air Force Headquarters from public criticism" in the Air Force's Working Group report presented to Congress earlier this year.

I have been told that the Department of Defense Inspector General intends to take a closer look at this issue. It is disappointing that it has come to this but an expanded DODIG investigation appears to be the only way to assure that those responsible will be held accountable.

As a member of the Academy's Board of Visitors, I was also pleased that the panel looked at the oversight role provided by the Board. I can honestly say that we have not done our job. Too many times, the Air Force only presented the good news and glowing reports; and too many times, the Board of Visitors was content to be led along by the Air Force.

Mr. Chairman, I have sent a letter to you suggesting that we include in this year's Defense Authorization bill the panel's legislative proposals pertaining to the Board of Visitors. I believe these proposals will be helpful as the Board of Visitors seeks to enhance its oversight role. You should also be aware that the Board of Visitors is scheduled to meet at the Academy during the October recess. This will be the Board's first meeting at the Academy since this crisis began last spring. We will be carefully reviewing the recommendations of the Air Force's Working Group, the Fowler panel, and examining the Air Force's implementation plans for improving the Academy's sexual assault and prevention programs.

Mr. Chairman, I again thank you for all of your assistance. The members of this committee, indeed all the Members of Congress, have a vested interest in ensuring that the Academy is safe for cadets. We all nominate cadets to Service Academies, which makes us all responsible.

Thank you again. I look forward to our question and answer time.

I would like to join my other colleagues in complimenting you on a job well done. I think that you have opened the eyes of many people and I think you have brought new information to the table that has not been discussed and considered in the past, and that is the reason the panel was formed. I want to compliment you on all that effort.

I also would like to just go back to your testimony, if I might, Ms. Fowler. In your testimony, and this is on page 3 of 4 on the fourth and fifth paragraph, you say: "But the panel is encouraged by renewed emphasis in Washington to immediately address and solve this problem. We are impressed with the leadership of Secretary Roche and General Jumper after a decade of inaction and failure. Secretary Roche made a step towards serious reform this year by rolling out his Agenda for Change and replacing the Academy's leadership team with one that has been quick to take action."

My question is, this was in your testimony typed. I did not see a change here, and I am not one to quibble over one word or anything like that. But that is your statement and you did not change that at the last minute, is that correct, Ms. Fowler?

Ms. FOWLER. No, that is my statement, and that was my statement at the press conference the other day. We are very impressed with the new leadership team at the Academy. General Rosa, Gen-

eral Weida, and Colonel Gray are doing an outstanding job. They have moved at a very quick pace really to implement some long-needed changes. So we are very impressed with what they are doing. I think they were great additions to the Academy.

Senator ALLARD. Let me ask each one of the panel and see if you agree with that. I will start with you, Dr. Miller. Do you agree with that statement?

Dr. MILLER. Yes.

Senator ALLARD. Mr. Bunting, do you agree with that statement?

General BUNTING. Yes, sir, I do.

Senator ALLARD. Ms. Carpenter, do you agree with that statement?

Ms. CARPENTER. Yes.

Senator ALLARD. Mr. Nardotti, do you agree with that statement?

General NARDOTTI. Yes, we do. I would just say that we do disagree with the current command on the issue of confidentiality. We have addressed that in the report.

Senator ALLARD. Yes, and I might get to that on my questioning.

Then Mr. Ripley, do you agree with that statement?

Mr. RIPLEY. I do.

Senator ALLARD. Dr. Satel, do you agree with that statement?

Dr. SATEL. Yes, Senator, I do.

Senator ALLARD. Thank you.

You did bring up, Mr. Nardotti, that there is a disagreement on confidentiality. For the benefit of this committee, would you please, Ms. Fowler, explain what the thoughts are about how to deal with confidentiality? I understand that this is an option that is going to be given to the cadets, as to whether they want to have disclosure or whether they want to keep it quiet. If you could help explain that process and when that cadet is going to make that decision. I think that is critical as to when that cadet would make that decision.

Ms. FOWLER. Yes. Senator Allard, first I want to thank you for your leadership on this. Your staff was invaluable to us when we were in Colorado Springs as to enabling us to meet with victims and setting up meeting places. I want to thank you for your leadership and your assistance in our panel's investigation.

While we commend the new leadership, it does not mean we walk in lockstep with everything. One of our main concerns, particularly after we were in Colorado Springs and met with several victims, was that the Agenda for Change did away with any form of confidential reporting. What we heard from every single victim we met with, without exception, was that you have to have some avenue for confidential reporting. The rape crisis center in Colorado Springs said you have to have some avenue for confidential reporting, and in fact, in a minute, I want to ask our expert here to talk about this.

So we really struggled. This is one of the areas we struggled with trying to find a way to establish an avenue for confidential reporting for these cadets without going back to the old system that did not work. One of our attorneys—I really commend him—came up with the fact that in 1999 a Presidential Executive Order was issued which established for the Armed Forces the psychotherapist-patient privilege, and then it was reinforced by military law.

This is available to all the Armed Forces. It is available now to both of the other Service Academies, and the Air Force Academy seemed not to have been aware of that as a route that could be taken. So we have recommended that there be a two-pronged route there, that those young women who want to just immediately report this officially, that route is available. But if a young woman, because this is a very traumatic experience for a young woman to go through, and if she is not ready yet to go through the official channels, then there needs to be a route by which she can talk to someone who is trained in how to handle this.

We have recommended that they bring on board, whether it be a psychotherapist or a licensed clinical counselor or a psychologist—there are definitions under the rule that can meet those qualifications. But these sort of people need to be at the Academy. There needs to be someone with those qualifications running the hotline, running the cadet counseling center, so that a young woman can go to someone that is well-trained, that her conversation with that person will be privileged, and that person will be trained also to help encourage that young woman to go the official route and explain to her that if she does not eventually take that route her assailant will never be brought to justice. You have had some well-meaning people dealing with these young women, but they have not had the proper training, they have not had the proper information to help bring them along.

We found many of these young women were not encouraged to officially report. In fact, they were told not to because they would be ostracized, it would ruin their career, the Air Force Office of Special Investigations would not handle it properly, and for all manner of reasons.

So we were pleased to find this privilege existed. We strongly recommend that this confidentiality privilege also be adopted at the Academy.

I would like to ask Anita Carpenter, who has been a rape crisis counselor for 13 years and brought so much experience to this panel, if she wanted to comment.

Senator ALLARD. I would like to hear from her, but in effect what you have done is you have taken an Air Force rule and you are making sure that it applies in the Academy.

Ms. FOWLER. Right.

Senator ALLARD. That has been one of the recommendations we have had all along, to make Air Force rules uniform throughout the Service, including the Academy.

Ms. FOWLER. This way they would not have anything unique at the Academy. This is available to everybody in the whole Air Force.

Senator ALLARD. Ms. Carpenter.

Ms. CARPENTER. Thank you. I will add, Senator, that we did take something that is existing in the structure and say, they have a mental health counseling center available to them and it needs to be better utilized. They also have a chaplains' system of privacy available to them that they can look at to implement victim confidentiality measures. I cannot stress enough as a victim advocate who has worked with countless numbers of rape victims the need for confidentiality.

My greatest concern without confidentiality is that a year from now we will see the Air Force Academy coming forward and saying, lo and behold, we have solved this problem, when in fact they have driven it back underground, as they did back in 1995 when they did not have a system of confidentiality.

Senator ALLARD. My time has expired, but this is going to be an issue of discussion, I think, part of the Board of Visitors meeting, Mr. Chairman, that is scheduled in October. I am sure this is something we will have to talk about at that Board of Visitors meeting.

Thank you. I have more questions, Mr. Chairman. I will catch you on my second round.

Chairman WARNER. Let the record show that you are a member of the Board of Visitors.

Senator ALLARD. Yes.

Chairman WARNER. Senator Allard, will you take that initiative at the Board of Visitors meeting?

Senator ALLARD. I do plan on that, Mr. Chairman, yes.

Chairman WARNER. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Chairman Fowler, I would like to ask about a connection, what the connection is, if you could explain to the committee the relationship between the athletic programs and the sexual misconduct. I understand there is a connection there and I would like to hear your thoughts on that.

Ms. FOWLER. If I could call on Colonel Ripley who has really been looking into that and has some views on it I think you would like to hear. Colonel Ripley.

Colonel RIPLEY. Senator, one of the things that became apparent during our very first hearings there—and this was from the old leadership, meaning the commandant, the assistant commandant—was an inference that whoever happened to represent athletics at the time—and that included coaches, that included the athletic director, whomever—they sat on their superior committee there that made all determinations, all the important determinations at the Academy, and they had a significant amount of influence.

So that if an athlete were deficient in academics or whatever the problem might have been, the athletic representative there could essentially veto or override the decisions of even the commandant. We found that very unusual. We also heard inferences from victims that athletes were excused from certain things and that the climate or the aura was such that the term “privilege” comes to mind. They could operate somewhat more independently, more freedom of action. There was one charge I heard, which was stunning for me, was that the athletes, in this case I remember it was football athletes, took very much pride in the fact that they never wore their dress uniform until graduation.

All of this was an inference that an athlete has a better run of things and has more control, and therefore less supervision perhaps, and ability to do whatever the athlete wanted to do.

Senator PRYOR. Is it your observation that those are not isolated incidents, but that it is really systemic?

Colonel RIPLEY. It is considered a general application.

Senator PRYOR. Do you know how many instances there were of an override or where an athlete was maybe let off the hook, so to speak?

Colonel RIPLEY. The most egregious example we heard was one that as I recall when we began had not yet been adjudicated, but it involved one athlete, I believe it was a boxer, who had been charged and eventually convicted of rape, while we were there.

Senator PRYOR. Yes, ma'am?

Dr. MILLER. The General Counsel working group had just a couple paragraphs about the accused and, because of Privacy Act information and because the IG reports are going case-by-case and looking through at all the accused, we were not able to do an in-depth analysis of that case. They mentioned that they saw among the accused no disproportionate representation among athletes. But I think it is important to break out the different athletic groups and to also look at those who were admitted to the Academy with waivers, who entered below Academy minimum standards, in order to participate in athletics. Information from the Air Force personnel center shows that increasingly year after year more cadets are admitted below standard with academic waivers to participate in athletics. So in the future research we might want to consider looking at those who are admitted with waivers versus those who are not.

Senator PRYOR. Good, thank you. Chairman Fowler, that goes to the next question I was about to ask, and that is, I know that under the mandate you had a very limited time to do this and a very tight timetable. I know you all put as many hours as you possibly could into this, and I understood you had, what, maybe two, three hearings, and then you did a number of less formal interviews with various witnesses.

I am curious about the numbers of witnesses that you actually talked to and the panel actually talked to. But I am also curious about if you had more time what in addition would you have done?

Ms. FOWLER. I think, Senator, the timeframe worked out all right. It was a short timeframe, but it made sure that we just worked really hard. As I said, these members took a lot of time off from their professions to devote the time. Many of our staff members took leaves of absence from their regular jobs to come devote their time to this. So we knew we had the 90 days that started when we had our first hearing on June 23. That clock was ticking, and we just said we are going to get this done. I think, as you can see, it is a very thoroughly done report.

I cannot really say there is anything we would have done more than what we did. What we have done is call for some further review that was not appropriate anyway. We are not the IG. The IG needs to do the type of investigation we have called for. There might be some more boxes of information somewhere, but we received box after box of records and information that our staff went through. We interviewed most of the people with whom we needed to talk. There still might have been a few prior leadership people in the Air Force we would have liked to talk to, but we just ran out of time. But we interviewed the main people we needed for our purposes.

Senator PRYOR. My last question is that I notice in your report you talk about a chasm in leadership and how that led to the prob-

lems there. In your opinion, and I would like to hear from the panel generally, do you think that the chasm in leadership has been corrected? In other words, is it fixed today or is it being fixed today?

Ms. FOWLER. We think it is fixed today. As for the new leadership at the Academy—the superintendent, the commandant, the vice commandant—we are very impressed with them. We met with them both unofficially and officially. I have had several conversations with the superintendent since that time, and we are impressed with their leadership, with their commitment, with their moving forward.

We have also been impressed with the actions that Secretary Roche and General Jumper have been taking and their personal involvement over the past several months in this issue and in their implementation of change. So I think we are very well-satisfied with the current leadership.

General Bunting.

General BUNTING. I am impressed by the current leadership as well. But the American military seems to treat the higher grades of officers as though they are interchangeable parts. They are Renaissance people, and they can do anything they are assigned to do. In my view the academies would be better served to find people as superintendents and deans who have a real vocation for that kind of work and leave them alone and let them stay there a long time.

In the past, we have had examples such as General Goodpaster who went to West Point. He was brought out of retirement, I think stayed there for 5 or 6 years. I think one of the things all of us were troubled by was the Academy and Air Force practice of turning over officers very quickly, so there is not much continuity of leadership.

Senator PRYOR. Mr. Chairman, that is all the time I have. Thank you.

Chairman WARNER. Thank you very much, Senator Pryor. That is an important topic observation and it is one that this committee has dealt with in the past, establishing the terms of the occupancy of the position of the Academy head.

Will you indulge me, Senator Dole, for 1 minute? Senator Allard thought it was important that we know this. Last night, he met with the Inspector General, and he reports to me this morning that in that conversation he explicitly brought up the question of the scope of his ongoing review of this situation and specifically how he intends to treat the current leadership, civilian and uniformed, in the Air Force.

Senator ALLARD. The purpose of the meeting that I had with the DODIG yesterday afternoon is twofold. Number one, I wanted to verify with him that he would move forward with the recommendations that were put in the report from the panel here that is before us. He assured me that he would move forward and continue to address those issues, particularly as far as the personnel were concerned over this since 1993. He was going to go ahead and do that.

Then the second matter that I brought up to him was—as you and I had talked to him in the past—if we run across any individual case where new information comes forward. I shared that with him, and I am not at liberty to share that discussion. But I just

wanted to assure that he was going to be prepared and he assured me that he was at this present time. He had already seen the report and had followed the discussion with the panel and was in the process of reviewing the leadership issues from 1993 up to the current time.

Chairman WARNER. To the current, that would include Roche and Jumper?

Senator ALLARD. We did not clarify that in that discussion.

Chairman WARNER. Well, that will be clarified.

Senator ALLARD. Yes.

Chairman WARNER. Thank you very much.

Senator Dole.

Senator DOLE. Thank you, Mr. Chairman. I certainly want to express my appreciation to you and to ranking member Senator Levin for the focus that you have put on this vitally important matter—good discipline, fairness within our Military Academies—and giving us an opportunity to discuss the findings of the independent review panel today. I certainly want to underscore all the kudos that have been expressed today. Congresswoman Tillie Fowler is a close friend of mine. I appreciate your outstanding work and that of the panel members. This is a job extremely well done in a very timely manner.

It is my hope that by following the recommendations of the panel all of the Services, not just the Air Force, can entrust their future officers to these institutions confident that only the highest standards of conduct and character will be required and upheld. The Service Academies must focus on the deliberate development of military officers, providing the required mentoring, guidance, and discipline to ensure excellence in future leaders. Now daily, of course, we see in the news just how critical those leaders are to our Nation and specifically to our sons and daughters whose lives are dependent on their leadership.

Now, as part of his Agenda for Change, the Secretary of the Air Force briefed this committee on the new blanket amnesty plan. In your report, it is mentioned that an amnesty program was also established under the watch of General Hosmer in 1993. What are your views on this most recent policy and how is it different from the program initiated 10 years ago under General Hosmer? How do you think this amnesty will be managed?

Also, as you answer that question, let me ask you to put it in context of the honor code as well, because the intent of the honor code as I understand it is to hold future officers to an explicit standard of conduct, part of which is to not tolerate any abhorrent behavior among fellow cadets. How can this amnesty program be resolved within the spirit and intent of the honor code?

Ms. FOWLER. Thank you, Senator Dole. As I am sure you all know, she has been an outstanding addition to the United States Senate. We have known each other a long time.

We have some concerns about the amnesty provisions, and we have raised the question in our report. In fact, we encourage the Air Force Academy to look at the procedures that the other two Service Academies use in encouraging reporting. The amnesty was put in back in 1993 and then redone again this year to encourage reporting. If a cadet has committed an offense such as underage

drinking for which they could be in trouble, and then at the same time they were doing the drinking a sexual assault occurred, they wanted to make sure that cadet was not hindered from coming forward to report the sexual assault by worrying that they would get in trouble that they were drinking underage. So that was the intent of putting in the amnesty.

There have been some concerns about misuse of amnesty and might there be other ways to encourage reporting. The way it is used at the other academies is that they say they will provide amnesty, but only after they have done an investigation of the facts of the case and then determine if amnesty is appropriate, rather than giving blanket amnesty from the very beginning.

So there are some differences there that are important and that we think that the Academy needs to relook at that. The intent is well done because it is to encourage reporting, but we are not sure that this blanket amnesty is maybe the best way to go.

General Nardotti is a former judge advocate, and I want to see if he might want to add to that, too.

General NARDOTTI. Basically, I agree with the way Congresswoman Fowler has described it. Basically, under the Agenda for Change, essentially a blanket amnesty, with a few exceptions, was going to be the policy going forward. The other academies that have applied this successfully do not use blanket amnesty. They do it on a case-by-case basis. We think there is a lot of merit to that. We think there are complications should a case go to trial ultimately if you have blanket amnesty or effectively immunity in place.

So for a variety of reasons, it makes sense to do it on a case-by-case basis, not the least of which is that it is important in the leadership development of the people that are at the Academy. The mere fact that someone had been subject to an assault but may be subject to be accountable for their own other misbehavior is something that we think should be included in the equation and should not automatically be eliminated. We certainly think it enhances the credibility of someone who comes forward with a complaint if they are doing that understanding that they have something at risk as well in that process.

Ms. FOWLER. Dr. Satel.

Dr. SATEL. Just one final element to this is the concern about a moral hazard that this kind of thing creates, where people might actually allege sexual assault when it did not occur in order to protect themselves from redress for another kind of infraction. So that was yet another consideration for making it a case-by-case basis.

Ms. FOWLER. You referred to the honor code. The honor code says you shall not lie, cheat, or steal. What we have found is cadets know they need to abide by the honor code, but they do not necessarily consider that sexual assaults come under the honor code because it does not come under lie, cheat, or steal. This then goes back to character development and values and ethics to understand that honor encompasses more than not lying, cheating, or stealing.

Senator DOLE. Thank you.

Did you examine what role the women officers assigned to the Air Force Academy may have played on the existing culture, and

were an adequate number of women officers assigned on the commandant's staff, on the academic faculties, on the athletic faculties?

Ms. FOWLER. There were not enough, and they are working to increase that, because we found an absence of female role models in the officer corps at the Academy. I know this year they have increased that number somewhat and they are working to increase it more, because it is very important that these young men and women have these role models there on the campus, what they call air officers commanding. They now have increased the number of women that are part of that program. So I think the Academy is making every effort to bring in more women in those roles at the Academy.

Senator DOLE. Were the women who were involved who were there in your view empowered in any way to break the chain of abuse, and did you discover any instances where these women who should have acted as mentors and leaders either were negligent or were silenced?

Ms. FOWLER. We were very disappointed in that the immediate past training group commander, Colonel Laurie Slavec, who had the safety and security of these cadets in her command, in her responsibility, did not take action several times when it was needed. In fact, her view as given in her testimony to the working group, was that it was not a true rape unless it was a violent assault. She had some unique views in this area. What happened then was young women really were afraid to go to her, were concerned that there would be retribution, that she would give them what they call Form 10s, which are forms of a reprimand at the Academy.

She really appeared to be creating an atmosphere of a lack of encouragement of reporting, which was unfortunate, to have a woman in that position, and yet that was the message she was sending.

Senator DOLE. Thank you. My time has expired.

Chairman WARNER. Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman.

Just to make sure I have this right, the General Counsel's report, which basically says lots of terrible incidents have occurred, but no one is responsible for this whole period of 10 years, was led by the Deputy General Counsel, who was prior to that part of a working group that during 2000-2001 was supposedly dealing with these matters?

Ms. FOWLER. The working group was led by Mary Walker, who is the Air Force General Counsel.

Senator DAYTON. Right.

Ms. FOWLER. But the Deputy General Counsel, one of the deputies because there are several, who was involved in this working group had, we discovered as we went through the records, led a working group in 2000-2001 on this very issue of sexual assault, sexual harassment problems at the Academy.

Senator DAYTON. This was not mentioned in the General Counsel's report?

Ms. FOWLER. It was not mentioned in the report.

Senator DAYTON. The deputy, who was part of this group, even though the General Counsel was ultimately responsible, was investigating matters that he had been previously involved on and that was excluded?

Ms. FOWLER. It is our understanding that Ms. Walker did not know of his involvement until just several weeks before her report was issued.

Senator DAYTON. Was the Inspector General also a part of this working group?

Ms. FOWLER. No, the DODIG was not a part.

Senator DAYTON. The Air Force Inspector General?

Ms. FOWLER. It is my understanding the Air Force Inspector General was a part of this group. Again, we had some questions, because the Air Force Inspector General had been involved also in the study back several years before.

Senator DAYTON. The Air Force Inspector General is now conducting this other review of whether the prior reviews have been conducted properly and prior actions have been taken or not taken?

Ms. FOWLER. My understanding is that the Air Force Inspector General is conducting a narrow review of individual cases. They are looking at individual cases as to how each individual case was handled by the Office of Special Investigations and by the process.

Senator DAYTON. Mr. Chairman, I think it is a waste of taxpayers' money for these investigations to take place by people who are clearly compromised and whose results are not credible, and they take a lot of time to come up with things that are meaningless, that disguise more and hide more than they actually reveal. In 90 days, you have done a vastly superior job to anything that has been done institutionally for the last decade. So I thank you for that, but I just think it underscores something bigger.

The big question I have is, is the Air Force Academy, is the Air Force itself, capable of really going to the bottom of this and really making the systemic changes, or, as you said, is the culture so infected that everybody who is part of the institution is infected with these attitudes and this tolerance and everything else? I think this shockingly suggests to me that there is not within the institution or the organization the capability to either come forward with what has actually occurred or to make those necessary changes.

On that point, your report at page 43 says the officer with the greatest experience and responsibility for the sexual assault program is the dean of faculty, General Wagie, he's directly responsible for the cadet counseling center for the Center for Character Development for conducting the student surveys, all of which proved to be totally inadequate in dealing with any of these problems over a decade and he's still there in his position as dean of faculty?

Ms. FOWLER. Yes, he is. It is my understanding that he is retiring early next year and that is the reason for our recommendation, because they will be picking a new dean of faculty who will serve a period of 3 to 5 years.

Senator DAYTON. He just stays on until he retires. There was—Senator Allard brought it to their attention—a sexually explicit skit that was performed at an official English Department dinner by cadets, and presumably would the dean know about something like that or have they reported to him something like that occurring?

Ms. FOWLER. Yes, and it's my understanding that after Senator Allard brought this to the attention of some of the authorities that finally that professor was removed.

Senator ALLARD. That's my understanding.

Ms. FOWLER. The professor that was responsible for that is no longer at the Academy.

Senator DAYTON. Okay, but the dean is still there and the department goes on. The member of the leadership team that was replaced received a medal in recognition of her performance at the Academy?

Ms. FOWLER. That was most disturbing to us and interesting. We just found this out a few weeks ago that it was Colonel Slavec that received the medal.

Senator DAYTON. Was that a medal for her unique views on—

Ms. FOWLER. It says for her meritorious performance at the Academy. We were concerned, since General Jumper had made it clear to us that there was an ongoing investigation of the former leadership at the Academy and that had not been completed. So for her to be awarded a medal, and I think it was April or May, for her service there called into question why that was done, and that was done by General Gilbert. We found out, as we wanted to know who gave her the medal. It was General Gilbert, who had been the former commandant, who in private session with us raised questions about her performance yet then turns around and gives her a medal for it.

Senator DAYTON. That's as far as you can determine the highest level in the chain of command where that decision was made to confer a medal? Was it not? The Chief of Staff of the Air Force or the Secretary of the Air Force?

Ms. FOWLER. My understanding is this was the commandant that could do this.

Senator DAYTON. It sends quite a message to everyone involved exactly what their priorities are.

The honor code, you pointed out, prohibits lying, cheating, stealing, and tolerating, and it also says to do the right thing at all times, but that does not evidently in the culture include committing acts of sexual assault or rape. Do they just believe the honor code doesn't apply?

Ms. FOWLER. There's no one said that explicitly, but that appears to be some of the part of the culture problem there. We call for some major changes in the Center for Character Development. That was instituted by General Hosmer, who was an outstanding superintendent and who has worked with us on this. He started some very good programs in 1993 and 1994, but unfortunately after he left some of them were not implemented in the way they should have been. What we say is that the Center for Character Development needs to have a mandatory class every year. It needs to be a class in which this becomes part of their life. They use case studies, they use examples so that they begin to inculcate those values and ethics that are so important to have in a commanding officer in the United States Air Force. They need to be acquiring those throughout their 4 years at the Academy through that center, not just going and sitting and listening to some speeches, which is

what it is now, that goes right over their heads and causes them to just check the box and leave.

Senator DAYTON. So this commander was responsible in 1993 and 1994, when some of these matters were brought to him almost, in some cases, the testimony or statements of women then were verbatim. Let's continue to what you heard in your review. Over the last decade we've had various commands come and go and the culture's deteriorated, but no one's responsible because everybody inherited the culture that preceded them. My two-part question I'd like to ask each of you to respond to if you would please, one is, is this institution able to correct itself from within given how, as you've said in your own comments, General, the culture's been infected? Is it so pervasive that we should close the institution down for a year and just go through a revamping? Should we dismiss everybody on the faculty who has to have some involvement in this and just clean the whole shop? I respect your views on the new command, and I hope they're as outstanding as you believe they are, but no one who has preceded them has been able to make any difference in this. I don't have any confidence that fundamentally this is going to change just because two or three people at the top have changed.

Ms. FOWLER. Senator, I do want to make clear, and we have it in our report several times, that the vast majority of cadets at the United States Air Force Academy are honorable young people. This is only a small minority.

Senator DAYTON. I'm not talking about the cadets, though. I'm talking about those who are faculty and the leadership, up above, including the dean who's still around and, et cetera.

Ms. FOWLER. The majority are honorable. Many of the leadership were good, but as you will see in this time line, and I don't think I referred to it, but the very last chart in your book is the time line. There were well-meaning people along the way who put things in place, but then because of the military turnover, they left. The next person coming in either didn't know about it, or was not as concerned about it, so it would rise and fall with concerns or with what would happen. No continuity.

Senator DAYTON. While all these well-meaning people came and went, 80 percent of the present women have experienced a sexual assault at some time in their 4 years. I guess I'd go back to my question; is it going to be possible to change it by replacing the top leadership and putting in a few changes, some of which you've already determined are counterproductive? Or is it so badly infected that it's unrealistic to think that the present organization itself can be self-corrected?

Ms. FOWLER. Let me have each of the panel members speak quickly to that.

Dr. MILLER. Our recommendations are for a comprehensive program to change it, so it's important that all the recommendations are taken together, including an outside board of visitors that's more active, more access to the public from the cadet level up to the top, so we don't think that you can just change the problem by changing the leaders. We do think you need outside monitoring and help.

General BUNTING. I'd make a quick but general comment about American universities and the way faculty members are now selected and the way they see their duties. When many of us were in college, 30 or 40 or 50 years ago, the most important person in our lives at the college was some assistant professor who took a personal interest in us, perhaps we visited in his house, we got to know his family, he represented, by the way he lived his life, something that we could aspire to be. What's happened generally in the universities, and I think the Air Force Academy is not to be excluded from this, is that professors nowadays see their role as people involved in the lives of young students as much less important than they used to. They are very anxious to retain their authority and stature in their field, to publish frequently, to do a lot of research; but as active agents in the education of these kids, they are much less involved than they were at one time.

I've made this point several times during these discussions. You have a faculty of very able people at the Air Force Academy, about half of whom I believe are civilians. Many of them have the equivalent of tenure. They should be involved as active agents in fixing this situation, but nobody talks much about them. They need a strong dean and some assistant deans to convince them of their importance in executing this imperative.

Ms. CARPENTER. I, too, believe that there is hope for change within the existing structure with accountable leadership, involved leadership, external oversight, monitoring. I think that positive changes can be made and I think that we can cite examples out in the civilian world of that teacher who is teaching in the ghetto system where it's crime-ridden and drug-populated, and she holds those students accountable and forces them to be responsible for themselves and makes that difference. Therein lies that accountability and ability to change.

General NARDOTTI. Senator, I would echo the comments of the other panel members and say that, first of all, the leadership that is in place is impressive, and I think that we should expect that they will fix the problem. They must fix the problem. Just as anywhere else in the military, if there were a serious problem you wouldn't call a time-out and take 6 months or a year to fix it. The organization needs to keep operating. It continues to have a mission. The Air Force Academy has a very important mission. It is succeeding in many ways with the vast majority of the cadets, but we have responsible leaders that we believe are fully capable of dealing with the problem. The challenge is going to be continuing that commitment over time, and that has been the problem over the past 10 years.

There have been some efforts, previously described as spasmodic, to deal with the problem, some of them very well-intentioned, some of them very well-thought through. But it's very clear that the follow-through simply was not there. Going back to what we mentioned before there was General Hosmer, who was very focused on the problem, and took some very extraordinary measures, proper measures, given all the circumstances. However, he left after about a year and a half. But the leadership that is there now we believe is focused in the right way.

Dr. SATEL. I think there are four good reasons for optimism, and two have been emphasized; the first being the new leadership—the new superintendent, commandant, vice commandant—that's been mentioned as well as our recommendations, especially the enhanced oversight and the longer tenure. But number 3 would be the incredibly intense spotlight that has been trained on this issue, and number 4, the fact that we named names. Obviously, we're not the ones to decide the fate of these individuals, but that was a very specific response—we had a very high threshold certainly for doing that, because it's a serious thing to do, but I would think that would really get people's attention that people will be held accountable, and that's yet another dimension to why I think this will be taken very seriously.

Senator DAYTON. Thank you. Again I'd just like to commend you for your outstanding service. Thank you, Mr. Chairman. My time has expired. I just would like to support your observation about asking the General Counsel to appear here for her remarks. I also think we should look very seriously at whether anybody within that establishment is capable of conducting a further report because I hate to waste taxpayers' dollars and time to come out with something that's going to be compromised before it even arrives. Thank you.

Chairman WARNER. Thank you very much, Senator. Senator Clinton, and I note Senator Collins will follow, very graciously you wanted your colleague to go ahead.

Senator CLINTON. I thank the chairman and my colleague, Senator Collins. I thank the panel for an extraordinary public service. This is a very impressive report. The thoughtfulness of your analysis and recommendations, if followed, should put us on the right path, and I would hope that in addition to following the recommendations of the chairwoman with respect to the dean of faculty, we would consider looking at all of these recommendations and putting them into the DOD authorization, because I think that we need to set a benchmark against which we can hold accountable and measure the progress that is being made.

Chairman WARNER. On that point, Senator, I'm glad you raised that. In consultation with the ranking member, we're going to see what we can incorporate in the pending conference report such that this matter is addressed immediately. General Bunting, who was former commandant at Virginia Military Institute (VMI), points out the need to have a dean, or freedom of selection of the dean, and not be limited by the membership on the faculty. That's an important observation that you've drawn from your experience at VMI. Thank you.

Senator CLINTON. I want to ask each of the panelists to respond to a question because I am still somewhat confused about the difference in emphasis between the first recommendation concerning awareness and accountability about the DODIG's conduct of a thorough review of the accountability of Academy and Air Force headquarters leadership, and the chairwoman's testimony this morning with respect to a thorough review of the accountability of the previous leaders at the Academy and Air Force headquarters.

My question is this: Did anyone in the present or prior leadership of the Air Force or the Department of Defense explicitly or im-

explicitly suggest to or ask you to, limit the panel's recommendation about the DODIG's investigation to former Air Force and Academy leaders?

Dr. MILLER. No. What I understood Ms. Fowler to be saying this morning is not a departure from what we said, but a clarification that in the course of our research there were questions raised about previous leaders. In the course of our research, none of the problematic questions raised dealt with the current leadership so that we're not arguing that the current leadership should be excluded, but just that, of the evidence we have, we only have questions about the performance of prior leaders. No one asked us to exclude the current leadership. I don't believe that's what Ms. Fowler said, and I personally agree that we have no evidence to exclude them. We only have evidence raising questions about the previous leadership.

Senator CLINTON. General?

General BUNTING. Yes, Senator. I would agree with and endorse that answer. Our interest once we got underway, basically, was at the Academy. We focused very intensely on what was happening there and did not spend a great deal of time addressing that issue.

Ms. CARPENTER. I would concur with Dr. Miller and General Bunting that we were looking at the process over a decade and we were dealing with a new leadership that had just started action, so our main focus was on the previous leadership.

Chairman WARNER. Could I just make a statement of fact for the record? Secretary Roche was confirmed by the Senate on May 24, 2001. According to my calculation, he was in office for 20 months before the letters that Senator Allard and I forwarded to the various people to begin to look at this. General Jumper was confirmed by the Senate on August 3, 2001, giving him somewhere around a little less than 18 months, so I just point out that they had been in office for, I think, significant periods of time. You draw on Colonel Ripley's, I think, rather dramatic metaphor, this was a ship in broad daylight sailing into a reef, and according to General Bunting, systemic problems were manifest to everybody who wished to see them.

Ms. FOWLER. In answer to your question, Senator Clinton, number 1, this has been an independent panel. No one has given us any directions as who to include or exclude in our recommendations and our review. We have operated totally independent of anyone in any place of leadership at the Pentagon or here on the Hill. That's been the good news and we've operated in a very fair and transparent manner.

It has been our opinion, as stated earlier, we can't make an official recommendation. I stated in the press conference in answer to a question on Monday, and again stated in my release this morning, that the information that we uncovered in our investigation, we could not find a reason to call for an investigation of the current leadership, but we could certainly find reasons to call for investigations of prior leadership when we saw time and again lack of action on their part. From what we investigated and learned, this current leadership, once it was brought to their attention, which was earlier this year, then they did take immediate action.

The Agenda for Change was issued before the working group report was finalized. They got the interim report, and they moved forward and put out the Agenda for Change, which needed to be done. You had young women cadets arriving at the Academy in June. They could not let those current procedures, the ones that were in place before them, stay in place. So we commended them for their action, even though we didn't agree with everything in it. It was better to move forward and get some changes started than to sit around waiting on all these reports to be finalized.

General NARDOTTI. Senator, I would just say that there was a lot of emphasis on the past leadership because of something that I said earlier, the assumption that nothing could be done about the past leadership, and it was our very strong opinion that something needed to be said about what we concluded about past leaders. Not much really needs to be said about the current leadership because they're still in place and action can be taken, so there was nothing that the report has said as far as saying that no action should be taken; we didn't find any. Certainly the leadership of the Department of Defense and certainly Congress has options that can be applied against the current leadership that are simply not available with respect to the prior leadership, and they should not be omitted merely because of the passage of time.

Colonel RIPLEY. Senator, my colleagues—I agree with all of them in that the focus, of course, when we began was certainly on the problem itself and how it developed, and we were trying to get at that issue of how in the world could this come about, so our focus was somewhat on the past. Be that as it may, as we began to continue our hearings and individual comments, it was obvious that this was the overused term, a systemic problem, and yes, at no point did we consider anyone exempt, current, former, future. anyone exempt from any of our recommendations such as they were at the time or would become. Let the chips fall where they may. If there are current problems and, as the report suggests, we think the DODIG should have a closer look at this, then that should be done, meaning current leadership should be held accountable.

Dr. SATEL. I say the same thing. No one told us that we should limit our investigation in any way. We did find Secretary Roche responsive, but the DODIG and this committee, as well, will have an opportunity to pursue with him whether or not in fact you feel he did live up to his responsibility.

Senator CLINTON. I thank the panel, and I thank the chairman for helping to clarify that prior doesn't mean a long time ago, that there has been a continuing set of issues that I think we need to leave open with respect to prior and present leadership. As the Colonel, I think, rightly said, let the chips fall where they may, based on whatever this committee continues to investigate and with a very strong admonition to the DODIG that by no means is there any agreement on this committee that any current leadership is exempt from a thorough investigation, that the plain words of the recommendation should be taken exactly as they are presented. Thank you, Mr. Chairman.

Chairman WARNER. I thank the Senator very much.  
Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. First let me apologize to the chairman and to the committee for my late arrival. As, I know Congresswoman Fowler can appreciate this, I was chairing the Governmental Affairs Committee and was unable to be in two places at once, but I am pleased to join you now.

I realize that some of my questions may be somewhat duplicative of what has already gone forward, but I feel so strongly about this issue that I'm going to proceed anyway. The chairman arranged a briefing in early August, I believe it was, with the IG, who shared with us the results of the survey of the female cadets at the Academy.

Chairman WARNER. Excuse me, Senator. That would be the DODIG.

Senator COLLINS. Yes, the DODIG. I had early on requested the DODIG to investigate this matter in my capacity as Chairman of the Governmental Affairs Committee. I was stunned and appalled at the results of that survey, as I'm sure was every person in this room. It showed, for example, that 11.7 percent of the female cadets surveyed from the class of 2003—this is recent, 2003—had indicated that they were the victims of either an attempted rape or an actual rape. It showed that overall in that class, and the first figures I gave you were a subset of the ones I'm about to give you, that 24.2 percent said that they were the victims of a sexual assault or an attempted sexual assault.

Another troubling fact to me was that the longer these women remained at the Academy, the more likely it was that they would be victims of sexual assault or attempted rape, and that the percentage of cadets who had experienced these crimes, and that's what they are, increased the longer that they were there. It's so troubling to me as someone who has encouraged young women to go to these academies and has had the honor of appointing them that I may be putting them in danger of a sexual assault. I just can't get past that fact.

I'm further alarmed that the IG reported that most of the cadets did not feel that they could come forward and report this, and indeed, 88.4 percent, an astounding number, strongly disagreed or disagreed with the statement that most cadets were willing to come forward and report a sexual assault incident regardless of loyalty to the offender. That is just extraordinary about what it says about the climate of intimidation at the Academy.

So let me begin by first thanking you for your thorough work, for your extraordinarily important work, and I believe we should quickly adopt all of your recommendations. But I remain troubled, as I think many of the members do, with the response of the very highest of levels of the Air Force to this scandal. I remember very well Secretary Roche and General Jumper coming before this committee, being questioned by this committee, and assuring us that everything was under control, that the working group, which you've been very critical of, was doing a good job, and most extraordinary, making conclusions before investigations were even complete.

So the one recommendation or the one finding in your report that I question is your statement that Secretary Roche acted appropriately. I don't know whether you had the benefit of reviewing the testimony of our hearing when all of us were pressing him and en-

couraging him to withhold judgment until he had all the facts and telling them that we believed that this was the tip of the iceberg. So I'm having trouble with accepting the finding that he acted appropriately, and, Chairwoman Fowler, we'll start with you.

Ms. FOWLER. Our opinion is based on our interaction with the Secretary. Senator McCain read some of the Secretary's comments. We had reviewed some of those also from earlier this year. I don't know any of us who as we've learned more facts haven't changed our opinions along the way, because knowledge always helps. My assumption would be, and I do not know because I have not talked to the Secretary about this, would be that he didn't have enough knowledge when he was making those statements back in February and March as he acquired later. As far as our concerns were, we saw that the Secretary moved forward in a very expeditious manner in promulgating the Agenda for Change, that there was a need before the new cadets came in June to immediately get some of these processes and procedures changed.

He and General Jumper, as soon as they had the interim report from the working group, moved forward with that Agenda for Change. It is not perfect, and they made clear that it was a work in progress, and would be an evolving document, but there was a need to move forward as quickly as possible, and so we commended him for that. He came before our committee June 23 to testify and answer questions, spent a long time with us answering a lot of questions. We had never met with him before then, but we were very impressed then with his candor, his forthrightness, his personal commitment to moving forward on this. During the time of our investigation, we have never had any problem with his being available to answer questions, with his making sure that the Air Force gave us what we wanted. Any time we had some lower level person seeming to slow it down, all we had to do was make a phone call, we got what we wanted in a timely manner.

So as far as this panel's interaction with the Secretary, it's been a positive experience as far as during the course of our investigation. We can't speak to his interaction with this committee or any other, but as far as our interactions with him, we have found him to be very forthcoming and to be very receptive to making changes. As you have seen over the past few months, and part of that is due to some of the things that we have brought out in our hearings, he has been making modifications to the Agenda for Change. We have appreciated that they have had an understanding that, again, you make changes as you learn more information. We consider that still a work in progress, and these changes are not going to happen all overnight. It's going to take a while. You don't change a culture overnight. It takes a while to do this and we're hoping that next year there's going to be somebody in place, hopefully this executive steering group as well as this committee, to look back and say, okay, what's working and what is not.

We hope our recommendations get implemented and we hope they work, but there's no guarantee until you put them in place and then someone has to review those. There is a great need for external oversight as well as internal.

Chairman WARNER. Senator, you have another 2 minutes, go ahead.

Senator COLLINS. Thank you. I appreciate that, Mr. Chairman. Do any of the other members want to comment on this issue?

General BUNTING. I'd like to make a quick comment about an agency of this whole enterprise, which thus far has escaped the rigorous discussion of this entire group, namely the Board of Visitors. When a university goes bad for a year or 2, look at the administration, fire the president, but when there is a long record of abuses of this kind, you should then, it seems to me, look at the Board of Visitors of the institution, which is ultimately responsible for that.

We studied the Board of Visitors carefully. As somebody who has run a couple of colleges, my main problem was keeping enough time to deal with boards of visitors who were on me like a cheap sweater all the time. They were good people and they were very much involved. Here we have an institution whose governing board was negligent, it seems to me, in their discharge of their responsibilities. They met once a year in Colorado Springs for a kind of dog and pony show. The average attendance was less than 50 percent. Some members never went to meetings at all. I went through all of the minutes of about 15 years' worth of Board of Visitors' meetings. For 2000, I couldn't find the minutes. The reason was there was never a meeting. That's the kind of thing which it seems to me ought to be looked at very severely.

Senator COLLINS. Mr. Nardotti, did you have a comment, too?

General NARDOTTI. Yes, Senator, just a couple of points for emphasis. First, it doesn't surprise me that Secretary Roche and the Chief of Staff of the Air Force wanted to take hold of this problem and deal with it as best they could within their discretion, including—and I wish Senator McCain were here—it doesn't surprise me that Secretary Roche wanted to investigate this internally. You would expect that of a military leader. This is an organization that he or she would be responsible for, and they're going to take that responsibility and deal with it, and specifically with the problem that they had to deal with, it was an ongoing issue. They have climate issues, they have issues in terms of how do you deal with the reporting. That's not something that can wait for a number of investigations to be done.

I certainly understand your point that, yes, there is wisdom in incorporating the evaluations of others, but I think as the leader of the Air Force, the senior civilian, as the chief of staff, the senior uniformed person, they believed, rightfully, in my opinion, that they needed to take some action. They have superiors. The Secretary of Defense, if he wanted to stop them from doing that and do something else, he could have directed that. Of course they answer to Congress in ways as well, so certainly their prerogatives could have been curtailed, but I think I would have been more troubled if they basically went into a non-action mode and didn't try to deal with the problem.

This is not a problem, as everybody understands, that is susceptible to any easy solution, and it also is something that they are dealing with, and if you go back over the timeframe, consider what's happened over the tenure of the Chief of Staff of the Air Force and the Secretary since September 11. I think that has to be thrown into the equation that all secretaries, all chiefs, are challenged, but there have been extraordinary challenges for the Serv-

ices, and they had that extraordinary challenge to deal with and another very complex issue to deal with here and assessing all of that and seeing where the Secretary wound up. Yes, he resisted, certainly, in some of the issues, but he did come around at some critical points and make some decisions with respect to personal actions and to the decisions that had to be made. We tried to take all that into account as we, in our limited view, assessed what we should say about the Secretary and the Chief.

Senator COLLINS. Thank you. Mr. Chairman, just one final quick comment. I don't think that we should expect the Secretary to just "come around." I think we should expect him to lead, and I have real questions about whether there was effective leadership here.

Chairman WARNER. Thank you, and actually, Senator, I'm going to pick up on one of your points here, and that is—Senator Allard read this—what you say here, "we are impressed with the leadership of Secretary Roche and General Jumper." Now, I'm referring to this famous press release by the Department of the Air Force at 3:00 p.m., 26 March 2003, in which they say, "As the problems regarding sexual assault allegations predate the current leadership, we do not hold Generals Dallager and Gilbert responsible."

Now they made that finding at a time when they just started to investigate it. The IG of the Air Force was investigating it. We later got the IG of DOD involved. Reaching conclusions as dramatic as that at a time when this situation is just bursting on the public scene, and mind you, the Secretary had been in office for 20 months, I'm puzzled by how you can make such a statement of clarity here that you're impressed. Did you question him about this release?

Ms. FOWLER. This panel did not come into existence until mid-June. We were not in existence back in March, February, when all this was occurring.

Chairman WARNER. But the committee sent you copies of this. I know that for a fact.

Ms. FOWLER. When we questioned the Secretary, he was not as emphatic on that area. I think by then, by mid-June, he had received the report from the General Counsel that he had just gotten it. We just got it like a day or 2 before our hearing. As I stated earlier, as we all receive new information, then we re-look. As you have seen, the Secretary then chose to demote General Dallager, he lost a star in his retirement. The verdict is still out, I believe with respect to General Gilbert and Colonel Slavec as to what responsibility will be held or not. According to General Jumper, that is still under review.

So, again, this has been an evolving process and we didn't—when we talked to the Secretary—

Chairman WARNER. My question was simply, did you ask him specifically about this press release?

Ms. FOWLER. I couldn't say whether we did or not, but as far as his responses to us that day, it was clear that this was still all under review.

Chairman WARNER. Still what?

Ms. FOWLER. That there was still a review going on as far as leadership responsibility.

Chairman WARNER. Then do you think it's a question of judgment to have made a decision as finite as this at the time he knew investigations were ongoing?

Ms. FOWLER. Well, obviously it wasn't a finite decision since he changed it later.

Chairman WARNER. Okay. We'll stop there on that one. Then I would say that, look, I'm not head hunting. I'm a former military Secretary myself, I say with humility. I'm no stranger, having spent 5 years, 4 months, and 3 days, during the height of the Vietnam War in the Department of the Navy, and I value tremendously what I learned from the uniformed and other colleagues in the department at that time. I've been able to spend my 25 years in the Senate here on this committee drawing on that experience, tremendously valuable. So I have the highest regard for the Service Secretaries. But I have a responsibility on this committee that's eminent. The Secretary of Defense asked that we start within days the hearing on General Jumper. This testimony and this record are very valuable as a contribution. We have to take it into consideration so I'm trying to clarify this.

I go back to your statement this morning that the current leadership should not be included in the IG's investigation, just former. How do you—

Senator LEVIN. Excuse me, I don't think that's—

Ms. FOWLER. No, I was going to say that. I've said it I think three different times, we'll have to go back to the record, that this is not an official statement. It's just our opinion as based on the information we have, that we haven't uncovered any reason for that, but it is only our opinion, it's not an official recommendation, and it's going to be up to the IG—

Chairman WARNER. We understand that.

Ms. FOWLER.—and this committee to make that decision.

Senator LEVIN. Would the chairman yield just for that to clarify?

Chairman WARNER. Sure.

Senator LEVIN. I don't think that this panel is even saying that the current leadership should not be included. What they are saying is they want the prior leadership to be looked at, and they don't have any evidence relative to the inclusion of the current leadership. But they're not finding that the current leadership should not be included, they're saying that that would be up to us if we believe they should be or if the IG believes they should be.

Ms. FOWLER. Thank you, Senator Levin. You said it much better than I could.

Chairman WARNER. All right. Anyway, you elected to use the word "former" here this morning. Do you have evidence that sexual allegations continued to occur for the 20 months that Secretary Roche was in office?

Ms. FOWLER. As you've seen by our time line and by the chronology, they've been occurring every year, but we do not have evidence that either the Secretary or the Chief were informed of what was occurring. That's been part of the problem, a lack of communication sometimes, between Academy leadership and headquarters leadership. That's why we support the institution of this executive steering group, that it be a permanent group so that there is an

entity that does continuous oversight of these issues at the Academy.

As General Nardotti stated, September 11 came, you have a Secretary and a Chief of Staff who are involved in some really critical national security issues, and in the meantime, no one's telling them what's going on at the Academy. There has to be a body that's going to be always looking at that, and that's why we say this executive steering group that the Secretary has instituted should be made permanent so you won't have these lapses occur again in knowledge at Air Force headquarters.

Chairman WARNER. I'll just ask one further question in this area. When I was Secretary, I very strongly relied on the General Counsel. I frequently met with him. I did not ever say, you take this task, go off and do it by yourself without my monitoring it, but that's my management style. I felt that the General Counsel of the Department of the Navy was very much a part of the leadership, but by this morning's testimony, I think it's confused. This only looking at the past would exempt the General Counsel from review by the IG at the very time your report brings some very strong denunciations on the performance of the General Counsel and that working group.

Ms. FOWLER. We are not questioning the integrity of Mary Walker. I think she is a very good General Counsel.

Chairman WARNER. No, I'm not suggesting you are.

Ms. FOWLER. We are not making any recommendations as to whom the IG should investigate. Her report was well done, but what we have pointed out is that in the course of our investigation there were certain omissions from that report that caused us concern, that we thought should have been included in a comprehensive review of the past 10 years.

Chairman WARNER. Well, that's well done, but you didn't do A, B, C, and D, so I think that's somewhat contradictory. Let me just move on to another subject. Let's go back to 1995, the past which you looked at. Following completion of the DOD task force on discrimination and sexual harassment in 1995, this committee conducted a hearing on Air Force programs. Then-Secretary of the Air Force Sheila Widnall, who co-chaired the DOD task force with Dr. Edwin Dorn, testified that the Air Force had implemented all of the panel's recommendations and assured this committee that the Air Force had taken necessary steps to ensure an effective program was in place.

Did you have Secretary Widnall before you? Were you able to determine if serious consideration was given by the Air Force to implementing the DOD task force recommendations at the Air Force Academy? Can you explain why the proven systems for responding to those reports of sexual harassment, including physical violence, were not implemented in the Department of the Air Force?

Ms. FOWLER. As I stated earlier, Senator, when I was asked the question about what we would like to have done if we had had a little more time, one of my statements was that there was some of the prior leadership we did not have the opportunity to interview. Dr. Widnall was certainly one we would like to. Of course, she's been very involved in the NASA investigation because she's on that board and hasn't been as available. We think that the IG needs to

look back over the tenure of each of the Secretaries for the past 10 years, because, as you said, Dr. Widnall did chair a task force on that, part of it dealt with the Academy, and what was the follow-through on it.

Again, if you look at the time line, sometimes there were studies done, reports made, but then no follow-through on implementation. They would tell the Academy to do it, but then no one was looking to see did the Academy really do what they said they were going to do. So there was a disconnect between Washington and Colorado Springs.

Chairman WARNER. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. The chairman has made reference to a press release of the Air Force, and I think very properly so. As a matter of fact, I think I actually led the way at that hearing back in March in criticizing the Secretary of the Air Force for that release. I think he was way off in suggesting that they should not look at leadership issues, and again, the record will speak for itself, but I think I actually was the one who said, are you kidding, you're not looking at leadership omissions? They changed their position.

I think every member of this committee took the same position that, of course, you have to look at leadership omissions. You can't just look at the people who committed crimes here, you have to look at the failure of leadership to change the environment. So I happen to agree with the chairman in terms of his criticism of the Secretary of the Air Force for this press release, and again I emphasize I joined very strongly in it. Indeed I did more than join.

But I think it's important that we understand precisely what you're saying here, and I think I understand it, but I want to just summarize my understanding of it. You are critical of the working group report for failing to go after, excuse me, to review or to inquire or investigate headquarters in terms of any omissions on their part. Is that correct?

Ms. FOWLER. Yes, or to reveal information that we know they knew, that members of the working group were aware of, that did not make it into their report, such as the 2000/2001 investigation that a member of the working group chaired, and yet it doesn't appear in their report.

Senator LEVIN. So there is information that they, or at least members of the working—

Ms. FOWLER. Some of the members. As I said, I'm not sure Ms. Walker had all that information, but some of the members of that group did.

Senator LEVIN. Well, that's important, and I think the significance of your making that distinction should not be lost, and I don't think I understood it even, frankly, until this moment. You are not then criticizing the working group necessarily for failing to include information which it had as a working group. You don't know that they had it.

Ms. FOWLER. We don't know what every member had.

Senator LEVIN. You know that a member of that working group had information which presumably should have been shared with the working group?

Ms. FOWLER. We do know that—I believe it was in April—the member of the working group who had chaired that 2000/2001 review, shared with the other members of the working group his role in that. Now, what more he shared with them I do not know.

Senator LEVIN. Okay. So that they may or may not be subject to criticism for leaving out information which they knew?

Ms. FOWLER. I would hope that—if I had been working on that working group and a critical member had said, oh, I forgot to tell you all in the beginning, but I chaired a review of this very issue in 2000 and 2001, I think I would have gone and looked to see what that report said and did, because here I am in the middle of a review. But we don't know.

Senator LEVIN. Have you reached any conclusion on that narrow issue as to whether the working group failed in that regard?

Ms. FOWLER. We have a page or so in our report that lists some of the omissions that we are aware of that were not in that report.

Senator LEVIN. Let me read you from page 4 of your report, because I want to see if there's some other place that you've gone further than this. You've indicated that, "any credible assessment of sexual misconduct problems over the last 10 years must include an examination of the responsibility of both Academy and Air Force headquarters leadership. The working group report failed to do that even though the Air Force General Counsel had access to considerably more information, resources, and time for study than did the panel." Are you concluding then that the working group failed based on what they knew to make an assessment, which the information in their possession should have led them to make? Is that where you're at?

Ms. FOWLER. Senator, if you will look at the next page, page 5, it details there matters that we uncovered, and that as far as we could uncover, that were known to members and staff of the working group, but were not included or only obliquely referenced to in their report. We detail those on page 5, and those were sufficient to cause us to raise the question as to why were they not included.

Dr. MILLER. That continues on to page 6 as well.

Ms. FOWLER. It goes on.

Senator LEVIN. That continues on page 6. The criticism of the working group, which then is laid out here, for failing to take adequate note of, and to inquire into, then the question raises: Does that criticism apply also to the Secretary?

Ms. FOWLER. As far as we know, and again, this is just our knowledge, the Secretary was not involved in the development of the working group report, that that report was developed by the General Counsel and her working group. So the information we had was that this was a staff-directed and a staff-done report that was presented to the Secretary of the Air Force as well as to others. General Nardotti would like to make a comment, if he could, on that.

General NARDOTTI. If you were to look, Senator, at the charge that the working group, the General Counsel's working group, had, the focus clearly is on the activities at the Academy, so technically when they focus on what is happening at the Academy, they covered all of the bases. Our position is, in looking at the information that we came across, which we believe the General Counsel work-

ing group should have come across much more easily than we could have, was that you could not tell the entire and complete story without explaining the involvement of headquarters, because at various times over those years, you had involvement of the Air Force Office of Special Investigations, the IG, and the Judge Advocate General was involved in looking at the problem at one point.

There was clearly attention by the headquarters to this problem at the Air Force Academy, and General Hosmer told our panel that although he did not run his courses of action before the Secretary before he took them, he had many discussions with Secretary Widnall about what was going on, what he was doing. We believe that there was knowledge of things in place, and what we have been critical of, with respect to the General Counsel's report, to fairly assess what went wrong, you can't tell that story just from looking at the Academy side.

I think, again, our point also was a matter of fairness. How do you put this entirely on the backs of the leadership of the Academy? Certainly they have primary responsibility because they run that institution, but some of these issues that were raised, the issue of confidentiality, how they were dealing with confidentiality was something that was wrestled with at headquarters' level, and Mr. Atlee's involvement later on had to do with that, but the point is, the larger issue is, that the headquarters had visibility and involvement in this and that appears nowhere in the General Counsel's report.

Senator LEVIN. I'm just going to conclude with two points. Number one is we are making it clear to the Inspector General that we want the Inspector General to review the actions or inactions of leadership, including the present, that is going to be made, as I understand it from the chairman.

Chairman WARNER. Correct, a letter that you and I will jointly prepare.

Senator LEVIN. That is going to be made clear to the Inspector General. So we're going to clear that issue up, even though you didn't find any evidence of something that troubled you relative to the current leadership.

Ms. FOWLER. All we could report on is what we uncovered.

Senator LEVIN. By the way, your independence is very clearly reflected here today, and we're very proud of that independence, including independence of the Pentagon, independence of the Academy, and independence from us. You've stood your ground here.

Ms. FOWLER. We tried to follow through in your intent in establishing the panel.

Senator LEVIN. That was the intent. But we have a responsibility, which the chairman surely symbolizes here, that we're going to make sure that that Inspector General's report covers the current leadership. That's our responsibility, okay, regardless of whether you found evidence or not, we have a responsibility. That's point one.

You apparently did not ask the Secretary of the Air Force—you don't remember asking specifically whether or not these matters were brought to his attention.

Ms. FOWLER. I haven't reviewed the transcript from June.

Senator LEVIN. All right. I think, Mr. Chairman, it would be incumbent on us in making clear to the IG that we expect them to include current leadership in their review, to ask the IG to specifically inquire of the Secretary of the Air Force whether or not the Secretary of the Air Force was aware of these facts that are laid out on page 5 and 6. That's number one.

Number two, after our hearing that the chairman has referred to, which I think was that date of March 30, we all were just aghast that the Secretary of the Air Force was not looking at the leadership issue. I think all of us concluded, how do you omit the leadership? Now, my question of the Secretary of the Air Force would be, if he were standing here, after that hearing and after he took steps to change the current leadership at the Academy, why did he not then inform the General Counsel that he wanted the General Counsel to look at the leadership issue as well as the specific events? Once we had been so critical of the Secretary of the Air Force for failing to look at leadership—when he said he can't go backwards, we said, sure you can, you have to hold folks accountable—he still apparently did not broaden his charge to the General Counsel for that report.

Now, the working group—what was the date of their report?

Ms. FOWLER. They reported in June. I don't know the exact date but it was mid-June.

Senator LEVIN. There were a couple of months there that the working group, it seems to me, I don't know if they could have, but should have been looking at the leadership issue once the Secretary of the Air Force knew that this committee wanted the leadership issue to be looked at. That is something that I think we should inquire of the Secretary of the Air Force and also make sure the Inspector General asks the Secretary of the Air Force, because that to me is something which was so dramatic that we were interested in that issue.

Chairman WARNER. I think that is an important point, and I think we should give this panel the opportunity to tell us. Did you inquire of the General Counsel what instructions did you get to include or not include this very valuable section? Like you say, any credible information over the past 10 years must have an examination? Did you inquire of her?

Ms. FOWLER. No, Mr. Chairman, she testified just a couple of days after we had received her report, so we had only—we had seen her interim report that she had issued a couple of months before—we'd only had her report in hand a few days. It was not until we were well into our investigation—

Chairman WARNER. I see.

Ms. FOWLER.—and we began to uncover information that we would go back and see was not in that report that we began to raise these questions.

Chairman WARNER. Did you consider perhaps recalling her to bring that very serious point up?

Ms. FOWLER. At that point in time her report was complete. So all we could do was raise it and let you know and let the offices that at the Pentagon know that these were omissions. The report was closed, the working group was through, and so there was no way we could get that reopened by this panel.

Chairman WARNER. Did you explore with the General Counsel how the charter for her working group was established, and did the Secretary at any point in time after issuance of the charter, did he return and suggest amendments or expansions?

Ms. FOWLER. As I said, Senator, when she came before us, we had just had her report a few days in hand, and as far as we knew, it covered everything, so it was not until several months later as we began to find these omissions that we started to see these questions and then her report was over.

Chairman WARNER. So we do not have before us today any facts relating to an ongoing collaboration between the General Counsel and the Secretary or the Under Secretary or other supervisors of the General Counsel as to how the parameters of her working group should be expanded or restricted?

Ms. FOWLER. We did not have that.

Senator LEVIN. But what we do apparently know is that the Air Force yesterday indicated that the General Counsel was carrying out the instruction that they were to look at procedures at the Academy and not the actions up in the chain of command.

Ms. FOWLER. We've seen that press release.

Senator LEVIN. Now, if that's true, then the question has to go to Secretary Roche, if that's accurate. Why, after being grilled by this committee and being told by this committee—we were interested in March in leadership failures—did you not amend the instruction to the General Counsel to tell the General Counsel, hey, don't just look at the Academy procedures or activities, look at the leadership failures as well? That's a question, it seems to me, that Secretary Roche has to answer.

Chairman WARNER. We're going to listen to further comments from the panel, but at this time our colleague has sought recognition.

Senator Allard.

Senator ALLARD. Mr. Chairman, I want to assume—are we under the 6-minute rule or whatever, and I want to still have my opportunity to have a second round to make comments or questions.

Chairman WARNER. You have the full opportunity right now. Why don't you start?

Senator ALLARD. Thank you, Mr. Chairman. I wrote a letter to you dated September 24 asking that we review the recommendations from the panel and see if we can't possibly get those in some form of legislation from this panel here.

Chairman WARNER. That is correct.

Senator ALLARD. So I want to make that a part of the record, Mr. Chairman.

Chairman WARNER. Correct, and you'll be working with Senator Levin, myself, and other members of the committee to incorporate in the conference report certain provisions that would become the law, assuming we can get a conference report accepted.

[The information referred to follows:]

UNITED STATES SENATE,  
Washington, DC, September 24, 2003.

The Hon. JOHN WARNER, *Chairman,*  
*U.S. Senate Armed Services Committee,*  
*228 Russell Senate Office Building,*  
*Washington, DC.*

DEAR CHAIRMAN WARNER: The Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy included a number of legislative proposals in its report released on September 22, 2003. These proposals were designed to correct problems in law that would strengthen the United States Air Force Academy's Board of Visitors oversight role and grant the Air Force greater flexibility with regard to the placement of personnel in key leadership positions.

Specifically, the panel recommended the following:

- The revision of Section 9355 of Title 10 of the United States Code for the purpose of reducing the number of congressional members on the Board of Visitors; requiring each Board member to pledge full commitment to attend each meeting and to carry out all the duties of a Board member; terminating any Board member's appointment who fails to attend in two successive meetings; providing clear oversight authority of the Board over the Academy; and eliminating the current requirement for Secretarial approval for the Board to visit the Academy for other than annual visits.
- The revision of Section 9335(a) of Title 10 of the United States Code which limits the available pool of potential candidates for the position of the Dean of Faculty.

I believe these proposals have merit and would be helpful in improving the Air Force's response to sexual misconduct at the Air Force Academy. I would appreciate your consideration of these proposals as a possible addition to the Fiscal Year 2004 Defense Authorization bill. Thank you for your time and consideration.

Sincerely,

WAYNE ALLARD,  
*United States Senator.*

Senator ALLARD. I appreciate your allowing me to work with you on that, Mr. Chairman. Then there are a few things that I just want to address, Mr. Chairman, that were brought up by members of the committee, and I had an opportunity to visit with the superintendent of the Air Force Academy, Superintendent Rosa, in August.

Senator Pryor had brought up the issue about how the athletic department had a separate sort of area over here, and it wasn't necessarily under the control of the superintendent. He's corrected, that according to that meeting, and also he does recognize that there is a deep cultural problem. He has spoken not only to the cadets themselves, but he's spoken to the alumni from the Air Force Academy, which I think is very key, as well as to the parents of the cadets, and said, look, we're all part of this problem, we all need to resolve it. Also, he understands the problems of working with the cadets and what-not. As I began to survey them, I think there was a recommendation that came out of Senator Dayton when he said that we need to begin to survey them when they first come into the Academy. I'm going to suggest this to the Board of Visitors on their survey, where we do it every year and progress and see how their attitudes change, as Mr. Bunting suggested, as they move through the Academy and see if we can't begin to have an impact on some of the cultural thinking at the very start.

The reason I want to bring this up is because I think the leadership that we have at the Academy right now knows and recognizes a problem, which is the big difference from what we had in previous years, and I think that they're trying to address that. I just think it's proper that we recognize it at this time.

I also have a question that I want to bring up. Now, the panel report described in general terms the efforts of various Academy and Air Force leaders going back to 1993. The panel did not specifically assess the efforts of these leaders, with the exception of the four Academy officers, which was described in your report. That was Major General John Dallager, Brigadier General David Wagie, Brigadier General Gilbert, and then Colonel Laurie Slavec. My question is, why didn't the panel assess the efforts of previous Academy officials and Air Force leaders who could have addressed the Academy's climate that permitted sexual assaults?

Ms. FOWLER. Again, in our 90 days we couldn't go to in-depth detail on every former Academy official, but if you will look at our chronology section, we do go through—we take each year starting in 1993 to 2003 and we do a fairly good chronology on who was in the leadership then and what was occurring, and what was supposed to be happening in relationship to that. If you go through this chronology, and you go through the time line that is in the back, I think our panel did a good job in 90 days of documenting that.

Senator ALLARD. I saw those charts back there, yes.

Ms. FOWLER. It gives you a good overview. As far as in-depth, getting into why something wasn't followed through on, we don't know that. But we do know if a report was made, we document that it was made, or if something was started, we documented it was started. The problem is sometimes that it didn't get continued on the next year.

Senator ALLARD. Now, here's the other question. I want to address one of the specific individuals that was mentioned in your report, that was Brigadier General David Wagie, who has served in the Academy for 16 years. During much of this time, General Wagie was responsible for the Academy's sexual assault response program, the administration of social climate surveys, which were not scientific, yet as the panel says in its report, he failed to recognize the problems and take appropriate action. Despite his failures, he continued to remain as dean of the faculty. Why do you believe the Air Force has not held General Wagie accountable?

Ms. FOWLER. That is a good question and that's one we are raising, because General Wagie was the officer who had the most responsibility for the sexual assault program and for the administration of these social climate surveys. He had the information every year. For the 5 years that he's been dean he was receiving that information. There's a question on some of the others sometimes as to whether they had it or whether they did not, but General Wagie did, and yet he, as far as we could determine, took no actions to make the surveys more scientific, he took no actions in relationship to the startling information that was coming out of those surveys as to the numbers of sexual assaults, as to the climate, as to the fears, the retribution, why these young women weren't reporting. He didn't move forward.

The cadet counseling center came under him. They reported to him, and yet time and again we can find no evidence that General Wagie came forward with the information he was receiving. We don't even see that he communicated that to the commandant or to the superintendent. We can't find the evidence of it. But he cer-

tainly had the information and was in a position of responsibility to begin some implementations of some changes, and that we can find no evidence that he did.

Senator ALLARD. Do you think that it's possible?

Chairman WARNER. Is he not part of current leadership?

Ms. FOWLER. He is.

Chairman WARNER. Should he not be therefore included in the IG's review?

Ms. FOWLER. We recommend that he be included in it. He's in the list of names. We have his name in the list of who should be looked at.

Senator ALLARD. Now, the thought is occurring to me, did you look at the reporting of these instances? I mean, this current superintendent expressed to me a concern about these instances being reported to him, so he knows, as the administrative officer, what's going on. Did you find a definite break-up in information getting up to the higher officers? When something happened in the Academy, was it getting reported to those in charge? Was that happening?

Ms. FOWLER. It's a gray area.

Senator ALLARD. Then when we had a problem at the Academy, was it getting reported to the people in charge in the Pentagon, and was it going up from there? Would you talk a little bit about this communication, which I think was a part of the problem?

Ms. FOWLER. It was definitely part of the problem, and this is definitely a gray area, and in our chronology you will see some years we were able to document that reports were made to Air Force headquarters in Washington. Other years we were not able to document that. Some years we were able to document that there was information that the superintendent had. Other years we didn't have that documentation. What is being said is that, oh, we didn't know, or often times prior leadership was saying, we didn't have that information, we didn't have that knowledge. We know sometimes they did, but sometimes they did not.

There was poor communications set up, a real lack of keeping good records. When we went to get this information, we found a lot of times they just didn't keep the records. We have recommended they do a better job of retaining records. Because of the turnover, we do recommend that the superintendent should be there 4 years, the commandant should be there 3 years. Commandants have been staying there an average of 18 to 24 months. 18 months? You're barely there before you are gone. You have to have more continuity in the top Academy leadership so that someone is overseeing what is happening there and has that information to act on.

General NARDOTTI. Senator, just a comment on the information flow. I think that we concluded there was certainly a breakdown of information that was a product of how they were handling their reporting system, the confidentiality system that had been in place. We didn't find evidence that the command had evidence of incidents upon which they could act and that they failed to act on that. The problem in the reporting system and the problem with dealing with these kinds of very difficult cases, if you don't get certain information right away in terms of evidence, and if you don't do certain things investigatively right away, it becomes very difficult to

prosecute, and that was the problem with the way the confidentiality was being handled in two respects. Number one, they basically had the confidential reporting. They weren't collecting that information. The victims were not being advised of what the consequences of that failure to go into official channels would be, and some of them were left with the impression that action could be taken later when it could not.

Trying to strike that right balance, and General Hosmer's thought, even though he was the one that initiated the confidentiality, his belief, and we agree with this, that number one, you need to get the reports in. If you don't have confidentiality, you're not going to get the reports. If you get the reports in and you put the victim in the proper hands of somebody who is qualified to deal with a person with that kind of emotional experience and mental experience that you're far more likely to get them directed into the right path to both take care of them physically, emotionally, mentally, and also to give them confidence in the system that if they get the information into the right channels, it can be dealt with.

That fell completely apart and the struggle over those—you look at this 10-year period—that continued to be a problem, and that definitely affected the information flow of when the leadership got information. They were getting it that these things were happening. They weren't getting it in time to take concerted action against the perpetrators. We don't fault them for that, that they didn't prosecute enough people. What we do fault them for is there were the indicators there that the problem was persisting and they were not taking enough concerted, consistent action to deal with them.

Senator ALLARD. Thank you. Thank you, Mr. Chairman.

Chairman WARNER. Yes, Dr. Miller, you've been very patient.

Dr. MILLER. The comment I had was directly to the issue that Mr. Levin was raising about the parameters or the limits of the charter that the working group had, and I'd just like to point out that they did cover the area of the Board of Visitors, which could perhaps be analogous to headquarters in terms of oversight that has some interaction with the Academy grounds.

Chairman WARNER. Why don't we just proceed right down the panel if that's agreeable to you. General Bunting, do you have some further observations you would like to offer to the committee?

General BUNTING. Less than a minute's worth, sir, because I know your time is limited.

Chairman WARNER. We're not in a rush. This is one of the most important issues pressing our military.

General BUNTING. What we have here is a very sick man. What we have here is a very sick man, and we have made a very thorough and lengthy diagnosis, the panel has, you have, these other working groups have, and it seems to me that a prescription has to be implemented and implemented quickly. It's not only a matter of a talented lieutenant general and his new leadership team going in to do the things that are necessary, but it's a matter really of transforming an entire culture, which, as somebody said, is the soil within which these sexual assaults and this kind of misbehavior has grown up.

It seems to me that everybody involved has to make a positive contribution towards doing this, and I have made this point two or

three times this morning, but I would like to make it one last time. If the dean has been there 16 years, and there has been accumulating evidence of this kind of behavior, and the president of the university, the superintendent has done nothing about it, what about the Board of Visitors? What about this oversight committee of eminent elected officials from the Senate and those appointed by the President? It seems to me in the future that has to be looked on as a very important resource in evaluating the work of the Academy as it goes along.

I would make one last point. I stress again the importance of junior grade leadership: lieutenants, captains, and majors. These are the young officers who are around these cadets all the time. They are members of their generation. They were born in 1980 or 1985. Those are the people that these young cadets are going to look at as models of integrity, and as General Nardotti has said several times, particularly with regard to their understanding of the importance of the contribution of women to the Academy and to the Air Force.

Chairman WARNER. Thank you, General Bunting, and indeed you draw on being superintendent of a prestigious military center, VMI, which in many ways is parallel to the Air Force Academy, West Point, and Annapolis. Ms. Carpenter?

Ms. CARPENTER. I think as a general comment I commend everything that's happened here to raise attention to the issue of sexual violence, that it's a pervasive problem in society in general. The advantage that we have at the Academy is that it is a controlled environment, and it is an environment which we hold to a higher standard, so we have an opportunity to make an impact. I think that, positively implemented and monitored, it has the opportunity to permeate throughout society and affect the 700,000 women who are sexually assaulted in the United States, so I appreciate the attention that this has been given.

Chairman WARNER. I think that's an important observation. I'm certain that the superintendents of West Point and Annapolis, who have followed this proceeding and your report very carefully, take note of that, and indeed perhaps other colleges and institutions across the Nation, although not military, can learn from this tragic experience. Yes, I was going to pass right down. General?

General NARDOTTI. If I could just make three points for the record. Going back to a point that Senator Levin raised earlier about why we didn't look more closely or pursue this issue with the General Counsel's report, we were trying very hard, given the time-frame that we had, not to get diverted on that issue. That could have really absorbed a lot of time and effort, and quite frankly we didn't really need an explanation. We were satisfied that, based on the information that we found with respect to headquarters' involvement, though it wasn't in the General Counsel's report, we believe it should have been in the General Counsel's report, we were going to say that, and we think the point will be made and it could be dealt with appropriately later.

Again, with respect to the current leadership, obviously they're vulnerable in the sense that they still can be held accountable. That's why our focus was on those that, the presumption was, could not be held accountable, the past leadership.

This was a point on confidentiality, going back to something that Senator Allard had raised, it is important to note that the solution we've come up with with respect to the Military Rule of Evidence 513, the General Counsel does address that in their report, but they effectively dismiss it or interpret it in a way that it doesn't create any solution, and notwithstanding the fact that they mention it in the General Counsel's report, when you look at the Agenda for Change, you don't see a word that supports a confidential approach. If you look at the statements of the leadership of the Air Force Academy, confidentiality, confidential reporting, doesn't appear anywhere in the list of priorities. So we would just point that out to you that, in fairness to the General Counsel's report, that point is there, but we disagree strongly with the way they have interpreted that and the way they think it can be applied.

To the extent that Air Force instructions are a problem, they can solve that. The Secretary of the Air Force can solve those problems, we believe, pretty quickly and make this a workable solution.

The last thing I would say, and this went back to a point that Senator Pryor raised about the issue of athletics, I just would make a comment in fairness to the new leadership, specifically to General Weida, when we were out at the Air Force Academy we did talk about that. He is very sensitive to that issue, and he had taken definite steps to make sure that the previously removed athletes—athletes who were less involved in the wing—were going to become much more involved in things. He was making some significant changes in that regard, and we believe that was another indicator that the leadership out there is going in the right direction. Thank you.

Colonel RIPLEY. Senator, I believe General Bunting stated it correctly. This is a very major problem. This is not a small issue. I'm sure that's obvious to anyone and it wasn't really obvious to me, I would say, until I saw the length, the breadth, the depth of this overall issue, much greater than I had presumed. It will not be fixed with a quick fix. That should be obvious as well. It's systemic, it spreads itself right across the Academy, virtually everywhere, faculty, cadet wing, leadership, athletics, you name it, they were all involved and they all need some sort of a redirection and perhaps an understanding of the whole issue of what women do, not just for the Air Force, but for our great Services in this country. That has to be looked at predominantly before anything gets fixed, and it extends back to the headquarters here.

I believe unless those involved look at this as serious as this committee has and this panel has, it will take a long time to convince anyone that the certain parameters and the obvious ways we operate are going to be that successful. What I'm saying is, we have to step outside the box and make sure that the changes, not just that this panel recommends, but our entire approach to fixing this problem is creative and unlimited.

Chairman WARNER. I thank you very much, Colonel, and I agree that we have to do some out-of-the-box thinking on this problem, but I believe that this panel has laid that foundation and sent a very strong signal that will be heeded by the Department of the Air Force.

Dr. SATEL. I certainly agree with the sentiments my colleagues have expressed. Hopefully the changes in the climate and the culture that we talk about will make future incidents rare, but I'm sure, unfortunately, things will still occur. As Anita mentioned earlier, though, one of the biggest worries is if there is no confidentiality, then the problem may become subterranean, so that is a very important thing for us, you, and the Academy to reconsider. But also importantly in terms of women coming forward, if they see in the future that they are treated with sensitivity and respect and that there's a determination to pursue wrongdoing and that people who require redress are in fact punished, then I think that will have very much of a facilitating effect on women coming forward. So the system has to work in an integrated fashion, you can't just change one part of it at a time. Thank you.

Chairman WARNER. We thank you.

Ms. FOWLER. Senator, can I wind it up for the panel? I skipped myself since I was chairman to be last. I just first want to thank the committee for recognizing the need for an independent panel. I think from our report it's obvious that there was a need for such a review and we are hopeful that these 21 recommendations will be implemented. There are a variety of means by which they need to be, some by legislation, some the Board of Visitors can do, and some the Air Force needs to do, but we hope they will be implemented. We think they are important. We particularly are concerned, as was mentioned earlier, we struggled a long time with the confidentiality issue. It goes to the very heart of reporting and we think it is extremely important that this be adopted, our recommendation in that area. It's going to take the Air Force some discussion too on that, but we hope the committee can work with them and get them to work their way through on it.

As we said earlier, this change is not going to happen overnight and it's going to take a dedicated, sustained effort by the Academy leadership and the Air Force leadership to alter the very culture of this institution. In our opinion, the reputation of this institution is at stake and it needs to take a dedicated, sustained oversight to see that this occurs, because today it is an honor to be a cadet at the United States Air Force Academy, and it should always be an honor to be a cadet there. That's what this is all about, making sure that every cadet at that institution is in a safe and secure learning environment.

That was the goal of this panel. As you have seen, every one of them has been very involved in this review and these recommendations reflect the opinion of the whole panel. Thank you again for having us and for instituting this panel.

Chairman WARNER. Let me just draw on one concept: It will not change overnight. I don't want this hearing to send a message to a female cadet at the Air Force Academy that tonight she could be subjected to something like that, that's not what you meant.

Ms. FOWLER. No, we're talking about culture.

Chairman WARNER. I think there's a check and balance in place now.

Ms. FOWLER. There are processes and procedures in place now that are much better, but cultural change, which is what the end of my sentence refers to, does not happen overnight, and that is

equally as important to make sure this is lasting is that the culture there is changed.

Chairman WARNER. Let me just make this observation and then conclude. We talked a lot about accountability today. Now I want to talk about a chapter in the history of this committee with regard to this subject, and we have to be accountable for our actions as a committee. Roughly July 2000, we had before us the nomination of Major General Hopper to become three stars. He had been a former commandant at the Air Force Academy. We received from—just coming into the committee—a letter from a former surgeon general of the Air Force bringing to our attention that during the course of General Hopper's tenure at the Academy there were allegations of sexual assault.

The committee took action as follows. We then referred that to the Office of the Secretary of Defense. I must say that a colleague, Senator Landrieu, likewise intervened on this case; she was a member of this committee I believe at that time. We asked the Department of the Air Force to investigate this and the Office of the Secretary of Defense. You make reference to that in your report.

Ms. FOWLER. On page 27, we refer to it.

Chairman WARNER. Page 27. Those investigations were completed. The Air Force and OSD came back to this committee indicating that General Hopper had no degree of accountability for those allegations which should affect the advise and consent proceeding and his being promoted. Well, the rest is history. The rest is history now today. So I just want to thank people who are not in this hearing room and may not even be following this hearing, but who had the courage to forward to this committee information that they possessed either first-hand or second-hand about these allegations. If it were not for the general public to come forward and help Congress in matters like this, I think in my opening statement I referred to, there are times when there's problems in the executive branch, for which we have oversight responsibility, and it's the general public, citizens just whose sense of integrity and honesty and fairness, in all probability, violation of clear law offends them. They have the courage to take the time to contact the Members of Congress. I wish to thank them in this case.

I believe that your report will engender further communications from individuals who perhaps have knowledge that somehow has not surfaced and come to the attention of anyone in a position of responsibility to date. So that's another great service that this panel has done.

Senator Levin and I have enjoyed a strong working relationship and friendship for some 25 years on this committee and we've been through a lot of hearings. This has been a tough hearing because it's a tough subject. We've asked tough questions and you've responded with absolute fairness, fortitude, and courage. I think we've clarified one or two things that may have caused a little confusion in the course of better than 3 hours that we've gone into this. I feel that our committee has responded and that we've shown you the enormous interest. The number of members here was significant today who attended and participated in this hearing.

Again, on behalf of the American public and particularly the military, be it the Air Force, the Army, the Navy, the Marine Corps, the Merchant Marine, or any others, thank you.

Ms. FOWLER. Thank you, Senator. Thank you, Mr. Chairman.

Chairman WARNER. The hearing is concluded.

[Below are questions for the record submitted by committee members for this hearing. Due to the Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy disbanding shortly before this hearing, some answers have not been supplied for the record (#5 and #9).]

#### QUESTIONS SUBMITTED BY SENATOR JOHN MCCAIN

##### AIR FORCE LEADERSHIP

1. Senator MCCAIN. Ms. Fowler, the report repeatedly refers to a lack of accountability and failure of leadership on the part of both the Academy and Air Force headquarters here in Washington, DC, in dealing with this situation. You further identify that the chain of command for the Superintendent of the Academy is a direct line to the Chief of Staff of the Air Force and the Secretary of the Air Force. Based on my military experience, this means that responsibility for the lack of accountability and failure of leadership by the Air Force headquarters ultimately resides with the Secretary and Chief of Staff. Do you agree with that assessment? Why is that not specifically stated in the report?

Ms. FOWLER. The report carefully delineates the chain of command that exists between the Academy and Air Force headquarters, and identifies as part of the solution to the problem "an actively engaged chain of command with external oversight." Our report also spans a 10-year period that includes six acting or confirmed Air Force Secretaries and four Chiefs of Staff and six Superintendents. Throughout the 10-year period, various leaders had various levels of information about the sexual assault problem at the Academy and took various degrees of action to deal with the problem. The panel did not find that the current Secretary or Chief of Staff failed to take timely or appropriate action.

2. Senator MCCAIN. Ms. Fowler, General Bunting, General Nardotti, Ms. Carpenter, Colonel Ripley, Dr. Miller, and Dr. Satel, the report mentions, and General Nardotti commented specifically in the hearing, that the September 11, 2001, terrorist attacks and subsequent wars in Afghanistan and Iraq commanded much of Secretary Roche's and General Jumper's attention. Are you suggesting that military leaders should not be held fully accountable for failing to take appropriate action to protect the safety of their subordinates from a situation that they had responsibility for because they are busy?

Ms. FOWLER, General BUNTING, General NARDOTTI, Ms. CARPENTER, Colonel RIPLEY, Dr. MILLER, and Dr. SATEL. The point of reference to the events of the post-September 11, 2001, world was to provide context to the committee concerning the press of official duties and responsibilities for the Secretary and Chief of Staff. The safety and security of Air Force personnel and the anti-terrorism/force protections measures would be at the forefront of their concerns. The panel did not make a finding that Secretary Roche and/or General Jumper failed "to take appropriate action to protect the safety of their subordinates from a situation [for which] they had responsibility."

3. Senator MCCAIN. Ms. Fowler, one of the most disturbing elements of the stories conveyed to me by the victims is that not only did the Academy and Air Force do nothing effective to deal with their sexual assault, it is alleged that Academy leadership in fact persecuted these women, denied them their constitutional rights, systematically undermined the victim's credibility, and chased them out of the Academy. I know that these allegations were made known to the panel. Why is this not even addressed in your report?

Ms. FOWLER. The DOD Inspector General and Air Force Inspector General are separately investigating the handling of all sexual assault cases from the last 10 years. In a letter dated September 19, 2003, the DOD Inspector General informed the panel that his office had, "reviewed all completed AFOSI criminal cases over the past 10 years for thoroughness and sufficiency, with a special focus on allegations of reprisal." Because his final report will not be issued until December 2003, and

our panel's congressional mandate expired on September 23, 2003, we did not have the benefit of those findings for inclusion in our report.

#### MEDIA INFLUENCE

4. Senator MCCAIN. Ms. Fowler, General Bunting, General Nardotti, Ms. Carpenter, Colonel Ripley, Dr. Miller, and Dr. Satel, the report comments that as a result of the media attention generated when the current scandal surfaced, the Air Force moved swiftly to address the problem of sexual assault at the Academy. The report also states that the evidence before the panel shows that the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action. Do you believe the Air Force would have continued to ignore, as it has for over 10 years, the sexual assault problems at the Academy if media attention had not forced senior leaders to finally take action? Why?

Ms. FOWLER, General BUNTING, General NARDOTTI, Ms. CARPENTER, Colonel RIPLEY, Dr. MILLER, and Dr. SATEL. Congressional involvement was key to the positive action the Air Force is taking, specifically the personal involvement of Senator Alard and Congressman Hefley. Congress' recognition that the severity of the problem warranted an independent panel comprised of citizens with specific expertise relating to the proper treatment of sexual assault victims, as well as knowledge of the Service Academies, was also vital to ensuring appropriate actions were identified and taken.

#### LEGAL ACTION

5. Senator MCCAIN. Ms. Carpenter, as an advocate for victims of sexual assault, would you please comment on the importance of victims being permitted to know the outcome of legal or administrative action taken against their alleged attacker?

6. Senator MCCAIN. Ms. Fowler, General Bunting, General Nardotti, Ms. Carpenter, Colonel Ripley, Dr. Miller, and Dr. Satel, I have been contacted by several of the alleged victims from the Air Force Academy, some of whom you have also met with. I found the accounts of their treatment by Academy leadership to be appalling and disturbing. Based on your investigation, do you believe that legal as well as administrative action is warranted against some former Academy leaders? Why?

Ms. FOWLER, General BUNTING, General NARDOTTI, Ms. CARPENTER, Colonel RIPLEY, Dr. MILLER, and Dr. SATEL. The victims who met with our panel and spoke about their ordeals were simply heart-breaking. Our panel was shocked, appalled and troubled by what we heard. The victims' testimony helped us craft a report that put the victim first. Again, the DOD and Air Force Inspector Generals are investigating and reviewing all actions in alleged sexual assault cases. We understand they are reviewing specifics details and actions of the victims, alleged perpetrators, Academy leadership, and the Air Force headquarters leadership. We understand their report will be completed in December 2003, and we expect Air Force leadership to take appropriate legal or administrative action.

#### INVESTIGATION PROCEDURE

7. Senator MCCAIN. Ms. Fowler, General Bunting, General Nardotti, Ms. Carpenter, Colonel Ripley, Dr. Miller, and Dr. Satel, the bias in the Air Force working group report that shields Air Force leadership brings in to question the credibility of any future reports on this matter by any Air Force organization. Considering the gravity of the accusations that have been levied against the Academy and Air Force leadership, should this investigation have been turned over to the Department of Defense Inspector General earlier?

Ms. FOWLER, General BUNTING, General NARDOTTI, Ms. CARPENTER, Colonel RIPLEY, Dr. MILLER, and Dr. SATEL. Our 90-day review uncovered information that is clearly disturbing, and the Air Force with considerably more time and resources did not include the same information. We believe the DOD Inspector General involvement is essential.

8. Senator MCCAIN. Ms. Fowler, General Bunting, General Nardotti, Ms. Carpenter, Colonel Ripley, Dr. Miller, and Dr. Satel, a number of the victims have contacted me to convey their skepticism of any further reviews on this matter by anyone associated with DOD. In your opinion, should an outside agency like the Department of Justice be asked to investigate the case?

Ms. FOWLER, General BUNTING, General NARDOTTI, Ms. CARPENTER, Colonel RIPLEY, Dr. MILLER, and Dr. SATEL. We believe the DOD Inspector General will provide a full and fair investigation.

COLONEL LAURIE SUE SLAVEC

9. Senator MCCAIN. Ms. Carpenter, what impact do you think the Air Force's decision to award Colonel Slavec a medal for her tour at the Academy will have on the victims of sexual assault who feel they were further persecuted by this colonel, or who were afraid to come forward for fear of persecution by her?

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

SERVICE ACADEMIES

10. Senator AKAKA. Ms. Fowler, I was appalled to find out about the sexual misconduct targeted at women at the Air Force Academy. This type of behavior is not acceptable. In reading through your report, it seems that there is a deep cultural aspect to this problem, which you mention is not unique to the Air Force Academy, and is also a problem at the other Service Academies. Would your recommendations be relevant to the other Service Academies? If so, which recommendations should be implemented by the other Service Academies?

Ms. FOWLER. Yes, our panel's recommendations may be relevant to the other Service Academies and should be carefully considered for implementation. We understand that the DOD intends to pursue this evaluation with the Service Academies.

FEAR OF REPRISAL

11. Senator AKAKA. Ms. Fowler, the report found that cadets were afraid to report sexual misconduct because of the fear of reprisal, discrimination, or harassment. The Air Force has taken a number of steps to address this problem. Do you believe fear of reprisal is still a problem at the Academy?

Ms. FOWLER. Our panel was surprised by the deep cultural issues that the Academy must recognize, understand, and take action to change the mindset of individual cadets and the culture of the cadet wing and the Academy. The cultural changes necessary will not happen overnight, and despite steps to address the problem, fear of reprisal remains a concern among cadets as evidenced by the latest Air Force Climate Assessment Survey in September 2003.

[Whereupon, at 1:08 p.m., the committee adjourned.]



# INVESTIGATIONS INTO ALLEGATIONS OF SEXUAL ASSAULT AT THE UNITED STATES AIR FORCE ACADEMY

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TUESDAY, SEPTEMBER 30, 2003

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:55 p.m. in room SH-216, Hart Senate Office Building, Senator John Warner (chairman) presiding.

Committee members present: Senators Warner, McCain, Inhofe, Allard, Collins, Ensign, Chambliss, Levin, Reed, Akaka, Bill Nelson, and Clinton.

Committee staff members present: Judith A. Ansley, staff director; Gabriella Eisen, nominations clerk; and Pendred K. Wilson, receptionist.

Majority staff members present: Charles W. Alsup, professional staff member; William C. Greenwalt, professional staff member; Patricia L. Lewis, professional staff member; Ann M. Mittermeyer, counsel; Scott W. Stucky, general counsel; and Richard F. Walsh, counsel.

Minority staff members present: Richard D. DeBobes, Democratic staff director; Gerald J. Leeling, minority counsel; and Peter K. Levine, minority counsel.

Staff assistants present: Michael N. Berger, Andrew W. Florell, and Andrew Kent.

Committee members' assistants present: Cord Sterling, assistant to Senator Warner; Christopher J. Paul, assistant to Senator McCain; John A. Bonsell, assistant to Senator Inhofe; Lance Landry and Jayson Roehl, assistants to Senator Allard; D. Armand DeKeyser, assistant to Senator Sessions; James P. Dohoney, Jr., assistant to Senator Collins; James W. Irwin and Clyde A. Taylor IV, assistants to Senator Chambliss; Meredith Moseley, assistant to Senator Graham; Christine O. Hill, assistant to Senator Dole; Russell J. Thomasson, assistant to Senator Cornyn; Davelyn Noelani Kalipi and Richard Kessler, assistants to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

## OPENING STATEMENT OF SENATOR JOHN WARNER, CHAIRMAN

Chairman WARNER. Good afternoon, ladies and gentlemen, colleagues. The committee meets today to receive additional testimony regarding the allegations of sexual assault at the United States Air Force Academy.

We welcome Secretary Roche, General Jumper, and the General Counsel of the Air Force, Mary Walker.

I felt very strongly at the conclusion of the testimony given by the panel appointed by Congress, presided over by a very distinguished former Member of Congress, Tillie Fowler, that those allegations raised in that hearing should be readdressed in the context of giving each of you the opportunity to respond. My colleague, Senator Levin, and other members of the committee concurred, so that's the reason we are here today. Plus the fact, I have to tell you, in my experience of some many years in association with the United States military, and particularly the academies, this issue is at the very forefront of almost every Member of Congress, because we are the ones, together with the Secretary and the Chief and others, who make the nominations to the Academy. These are young people that come from the big cities and the small towns all across America, and they expect a lifestyle and an environment that is second to none in terms of quality, integrity, and honesty to fulfill their own individual goals.

This committee's going to take such time as it deems necessary to work our way through this very tragic situation.

Last Monday, September 26, the congressionally-mandated "Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy"—that is the title used in the law—issued its report, which contained a number of findings and recommendations. On Wednesday of last week, Congresswoman Fowler and the other six members of the panel testified before this committee. During the course of that hearing, other members of this committee and I indicated our intention to have the Air Force General Counsel appear before the committee to respond to the panel's conclusion. We then decided to include the Secretary and the Chief.

The hearing today will enable these witnesses to address a number of issues identified by the Fowler Panel, including the omissions in the Air Force investigation to date of the problems at the Air Force Academy. It will also give, particularly, Ms. Walker and Secretary Roche an appropriate opportunity to respond to the panel's express belief that the Air Force General Counsel attempted, "to shield Air Force headquarters from public criticism by focusing exclusively on the events at the Academy."

I view today's hearing as an important next step in the difficult process of ensuring that the problems of sexual harassment, sexual assault, and hostile attitudes toward women at the Air Force Academy, which hopefully are in the past tense—indeed, the entire Air Force itself, General Jumper—are eliminated finally once and for all. That's the ultimate goal of all of us.

Achieving that goal, however, depends upon a clear understanding of how our Air Force and Air Force Academy leadership failed, or did not fail, as the case may be; we are here objectively to listen to the past history and to such information as they may have had.

As noted in Congresswoman Fowler's report, "The Air Force and the Academy cannot fully put this unfortunate chapter behind them until they understand and acknowledge the causes." The report goes on to state, "In order to make clear the exceptional level of leadership performance expected of future leaders and to put the failures of recently removed Academy leadership in perspective, there must be further accounting. To the extent possible, the failures of the Academy and the Air Force headquarters leaders over the past 10 years should be made a matter of official record." I'm quoting that report, all of which you have well in mind. But those who have joined here in this room today, and those who are following this hearing, I have to recite exactly what is in that report.

I would be remiss if, at this point, I did not address the pending nomination of Secretary Roche to be the next Secretary of the Army. I have stated my concerns about proceeding with Senate consideration of Secretary Roche's nomination while issues relating to the accountability of Air Force leadership, including Secretary Roche, are still being reviewed by the executive branch, that being the Department of Defense Inspector General (DODIG). In a press release by the Air Force on the Fowler hearing, which was given to us today, there were references to other inquiries going on in the Pentagon.

Now, at that point, if I may stop, my colleagues here full know the constitutional responsibility of the United States Senate to give advice-and-consent to Presidential nominations, and that we do regularly. I've been privileged to be on this committee many years. I have felt that throughout the years, no matter who is chairman, we try to render an impartial and, in many respects, totally non-political judgment in accordance with our constitutional mandate. But when we're on notice—I mean, actual notice—that the executive branch, a separate but co-equal branch of the government, is continuing to investigate allegations or facts relating to the nominee pending before the United States Senate, the question arises, can we go forward until such investigations are completed?

One of the reasons I'm a bit late, the President's counsel just called me on the phone, because he has several letters from me in front of him raising this juxtaposition between the activities of the executive and legislative branches on this nomination. His counsel to me has been very helpful on this, and he understands and respects entirely the constitutional obligations of this body.

I always proceed with these nominations in a totally unbiased manner and with total neutrality, and wait until all the facts are before me before I cast my vote, together with other Members.

So, at this time, I cannot give you a definitive answer, Mr. Secretary, but I'm continuing to work through that situation, in consultation with the ranking member and other members of this committee.

Bear in mind that this problem at the Air Force Academy was, once before, referred to this committee. Several years back—I'll put in the record the explicit details—it was brought to our attention, by an individual who was in a position to have knowledge, that there were problems at the Academy. As is the routine of chairman of the committee, I was chairman at that time, we referred it to the Department of Defense (DOD) for an investigation. The Assist-

ant Secretary of Defense for Force Management and Policy, after the Air Force Inspector General had investigated, came back and assured this committee that the allegations raised in that communication to the committee had been fully investigated and there was no basis on which the committee, at that time, should hold up the nomination by the President of an officer in the Air Force for higher promotion. Absolutely no basis.

[The information referred to follows:]

The reference by Chairman Warner concerned the Air Force and the Office of the Secretary of Defense response to a letter from the chairman and ranking member about a nomination then pending action by the Committee on Armed Services of an Air Force officer who previously had served as commandant of the U.S. Air Force Academy.

The committee forwarded the attached memorandum on July 27, 2000, to the Assistant Secretary of Defense for Force Management and Policy requesting comment. The attached memorandum is titled "Sexual and Physical Assault at the U.S. Air Force Academy" and identifies many of the problems that were identified in 2003 that resulted in Secretary Roche's order to establish a Working Group.

The Assistant Secretary of Defense responded to the committee on September 5, 2000 (letter attached), that the Air Force Inspector General had investigated and thoroughly reviewed the allegations and they were found to be unsubstantiated.

ASSISTANT SECRETARY OF DEFENSE,  
4000 DEFENSE PENTAGON  
Washington, DC, September 5, 2000.

Hon. JOHN W. WARNER,  
*Chairman, Committee on Armed Services,  
United States Senate,  
Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of July 27, 2000, concerning the nomination of [deleted] United States Air Force, for assignment as [deleted] and for appointment to the grade of lieutenant general. His nomination is pending action by your committee.

The Air Force Inspector General thoroughly reviewed [deleted] allegations. The allegations have been investigated and found to be unsubstantiated.

The Secretary of the Air Force fully supports [deleted] nomination. Accordingly, I request his nomination for appointment to the grade of lieutenant general proceed forward for confirmation.

Sincerely,

ALPHONSO MALDON, JR.

cc:  
Senator Levin

## SEXUAL AND PHYSICAL ASSAULT AT USAF ACADEMY

- The information presented here surfaced over two months (April- May 96) as a result of an investigation into mental health services at USAFA, a subsequent credential's investigation of a provider and ongoing observations of a psychiatrist providing manning assistance to USAFA
- The provider being investigated is Col. [REDACTED], a psychiatrist whose clinical privileges have been suspended pending a hearing at USAFA
- The full magnitude of the problem presented here is unknown; the data has emerged in a very brief period of time but the prevailing culture of silence at USAFA, coupled with the known stigma associated with coming forward, suggests the problem may be much larger
- Several cases are already considered high visibility- in the media
- 15 specific cases are identified here

### There is a problem at the USAF Academy which threatens the foundations of the institution

- Female cadets may be at high risk for physical or sexual abuse because of the institutional culture at USAFA which has not addressed the existence or severity of the problem
- Cadets who have been sexually or physically assaulted are at high risk for further damage because of this culture as well as the lack of coherent institutional measures to address the problem
- This issue is not openly addressed
- Cadets who have been victimized continue to be hurt
- Cadets who have not been victimized but who are aware of the problem do not have the institutional support or tools to know how to deal effectively with the problem
- There is an opportunity now to heal individuals, as well as the Academy

### Background

- Sexual violence describes acts of sexual assault as well as acts of sexual battery which involve a spectrum of behavior from unwanted touch to rape
- National statistics report sexual assault occurs on college and university campuses at a high rate (5-25%)
- most cases are characterized as 'date rape' or 'acquaintance rape'

### The Problem

#### The Culture

- The culture at USAFA values loyalty to the institution over personal integrity
- Cadets confuse loyalty to the institution with loyalty to their own values
- 'Pimping' or turning in another fellow cadet has serious negative consequences in the community
- This is a perversion of the notion that 'your buddy in the foxhole' comes before anything else
- The Honor Code is perturbed as a result

#### Sexual Violence

- At USAFA individuals and behavior are held to a higher standard
- At USAFA the consequences of abuse are more devastating
- At USAFA, individual officers and agencies have enormous unchallenged authority over cadets' futures
- At USAFA, individual officers and agencies are held in high regard and looked to for a model of behavior
- Any assault is intolerable; sexual battery is a felony crime

- There is no formal, sanctioned program at USAFA to address the needs of cadets who have been assaulted
- No one has ultimate responsibility for the appropriate handling- investigation and treatment (individual victim and community) of the incident
- The system contains a fractured composite of agencies, functioning independently
- Cadet Counseling Center, Mental Health Clinic, Center for Character Development, Chaplain, OSI, JAG, SP...
- There is no safety net for a traumatized, injured cadet
- Many female cadets come to the Academy with early histories of childhood abuse; this subgroup is the most vulnerable to the trauma of sexual assault and most likely to develop symptoms of Post Traumatic Stress Disorder
- A cadet who has been assaulted is likely to be ostracized and humiliated because they were hurt
- A cadet who comes forward may be treated with distrust or anger for betraying the group.
- A cadet who has been assaulted is subjected to an investigation by legal/police/OSI agencies which may yield an assembly of hearsay evidence which implies she had 'merited' the assault.
- A cadet who has been assaulted may be subjected to a process of psychiatric 'diagnosis', MEB and disenrollment
- A cadet who has been assaulted will most likely suffer silently in shame
- The trauma and human suffering for the cadet is always aggravated in this system
- Effective treatment is prevented
- Future leaders are lost
- Individual military careers are ruined
- Families are devastated
- Communities are affected
- Confidence in the military is diminished
- The United States is affected

#### The Data

1. Cadet A (██████)- Female (white)- raped, severely traumatized, would only sleep with a weapon, now on medical turnback- previous enlisted member--now disillusioned and confused--USAFA represented pinnacle of her aspirations
2. Cadet B (██████)- Female (black-Asian)- beaten by her boyfriend-no action taken- IG document characterized her as being depressed and enjoys being beaten--character maligned severely-- cadet was beaten and psychiatrist was asked whether she was commissionable as a result of IG report(privileged information)
3. Cadet C Female- beaten by her boyfriend- hospitalized- no action taken
4. Cadet D (██████)- Female (Hispanic)- raped, severe PTSD, leaving the Academy for a year--waited three weeks before reporting rape- afraid to come forward/ evidence 'destroyed' (i.e. had bathed)--refused to see former psychiatrist whom she claims threatened her if she did not report details of rape to him- had no future plans-Cadet Counseling Center helpful- current psychiatrist helpful (privileged information)
5. Cadet E (██████)- Female (Hispanic)- raped/assaulted while at prep school; reported perpetrator who has left Academy, subsequently gang raped by his friends a year later. Ostracized for reporting first crime- she has not reported second crime (privileged information)

6. Cadet F (██████)- Female (white)- date raped while in a dissociated state presumably related to an earlier violent rape in high school (raped while she was asleep)-is not pressing charges although OSI has conducted extensive report (privileged information)
7. Cadet G (██████) Female (Indian-Portuguese)- assaulted, assailant cut her vagina, did not report crime-came to attention as a result of noticeable blood loss- on books as "unsolved crime"- 'The Valentine's Day Rape' (1993)- one of founders of 'underground women's support group'
8. Cadet H (██████)- Female (Thai-Welsh)- raped, has not reported crime (privileged information)
9. Cadet I (██████)- Female(Hispanic)- raped, reported crime, determined that 'evidence insufficient to proceed'- wishes she had never reported up chain, has endured classes with perpetrator-graduates this year
10. Cadet J (██████)- Female(white)- physically assaulted, maybe raped
11. Cadet K (██████)- Female(white)- sexually traumatized in 'Banner Incident', disenrolled from Academy by MEB never mentioning the assault, never treated, currently challenging case in media
12. Cadet L (██████)- Female(black)- raped, perpetrator sentenced, --was subjected to psychotherapy by psychiatrist who instructed her to "enjoy the acts that were done to her"- was 'ordered' by him to see no one else but him- prevailed nevertheless and is a senior this year
13. Cadet M (██████)- Female(white), traumatized during SERE rape simulation, left Academy still requiring psychiatric care
14. Cadet N (██████)- Female (white) raped at Academy--co-founded underground support group for victims-
15. Cadet O (██████)-Male, traumatized at same SERE experience as Cadet L--left Academy--due to administrative charges -Women's underground support group started in part in response to identifying with his distress-never got help

When asked about incidents of males assaulted by males, I was told 'there was one case':

16. Cadet O.-Male, raped by another male, left Academy in shame--no other details- may be apocryphal although story is widely known

Finally, there was an incident related to me by several individuals:

17. Report of discovery of fetus-or fetal tissue in bathroom by housekeeper. Counseling Center involved. If cadet involved-never identified.

#### Current System

- Reflects institutional/cultural dysfunction
- Underground 'Women's Sexual Assault Survivors' Group'- secret group- network of women aware of a cadet's problem will bring individual to group- requests to participate are screened by cadets in the group
- Individuals interviewed at USAFA say that a formal/recognized program for abused cadets will discourage participation- cadet will be openly identified and subject to further humiliation
- Contradicted by experience at West Point
- Institutional Policy, recently adopted at USAFA permits victim to decide if she wants to identify perpetrator and press charges- can remain silent as long as she obtains help 'at one of base agencies'
- Policy is viewed positively because it gives victims "control"
- 'Control' in this instance is misguided concept- it allows victims to prevent further humiliation or abuse

they may experience by coming forward

- Protects perpetrator
- Maintains culture of silence and intimidation
- We no longer permit victims of domestic violence in this country to decide whether or not to press charges- this decision is appropriately taken out of a victim's hands

#### **Solution**

- Open, candid identification of problem by leadership at USAFA
- Protect victim first
- Establish consistent, seamless policy for handling victims of assault which is authored and coordinated by all composite elements of system (IPT Task Force)
- Everyone should know what to do and how to access operating instructions for assaulted cadet
- Once system knows how to handle the cadet- can begin to address institutional/cultural issues
- If policy effective and climate of increased safety in place, more cadets will come forward- important public affairs issue
- Separate Task Forces to address educating system, resocializing cadets' experience
- Draw on national, civilian expertise to address individual and community needs

#### **Additional Thoughts**

- This is a fundamental issue of leadership and integrity
- Difficulties identified at Annapolis will pale in comparison to this

Now, this committee relied on the executive branch once, and as history tells us, for some reason that investigation at that time, in my judgment, was flawed and should have somehow turned the page and seen the problems that existed at that time, because these problems go back a decade.

I think I'll put the balance of my statement in the record. I think I've addressed most of the issues that are before us.

[The prepared statement of Senator Warner follows:]

#### **PREPARED STATEMENT BY SENATOR JOHN WARNER**

The committee meets today to receive additional testimony regarding the allegations of sexual assault at the United States Air Force Academy. We welcome Secretary Roche, General Jumper, and the General Counsel of the Air Force, Ms. Mary Walker.

Last Monday, September 22, the congressionally-mandated "Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy" issued its report, which contained a number of findings and recommendations. On Wednesday of last week, Congresswoman Fowler and the other six members of the panel testified before this committee. During the course of that hearing, I indicated my intention to have the Air Force General Counsel appear before the committee to respond to the panel's conclusion regarding the efforts of the Working Group, which the Air Force formed to investigate the problems at the Air Force Academy, and which was chaired by Ms. Walker.

On Friday, Secretary Roche and General Jumper requested an opportunity to testify before the full committee, as well. I consulted with Senator Levin and promptly scheduled this hearing to ensure that they had that opportunity.

The hearing today will enable the witnesses to address a number of issues identified by Congresswoman Fowler's panel, including the omissions in the Air Force's investigations to date of the problems at the Air Force Academy. It will also give Ms. Walker and Secretary Roche an appropriate opportunity to respond to the panel's express belief that the Air Force General Counsel attempted to "shield Air Force Headquarters from public criticism by focusing exclusively on events at the Academy."

I view today's hearing as an important "next step" in the difficult process of ensuring that the problems of sexual harassment, sexual assault, and hostile attitudes toward women at the Air Force Academy—indeed, in the Air Force itself—are eliminated. That is the ultimate goal.

Achieving that goal, however, depends upon a clear understanding of how Air Force and Air Force Academy leadership failed to effectively address these problems over the years. As noted in Congresswoman Fowler's report, "The Air Force and the Academy cannot fully put this unfortunate chapter behind them until they understand and acknowledge the cause." The report goes on to state, "in order to make clear the exceptional level of leadership performance expected of future leaders and to put the failures of recently removed Academy leadership in perspective, there must be further accounting. To the extent possible, the failures of the Academy and Air Force Headquarters leaders over the past 10 years should be made a matter of official record."

I would be remiss if, at this point, I did not address the pending nomination of Air Force Secretary Roche to be the next Secretary of the Army. I have stated my concerns about proceeding with Senate consideration of Secretary Roche's nomination, while issues relating to the accountability of Air Force leadership—including Secretary Roche—are still being reviewed by the Department of Defense Inspector General.

The problems at the Air Force Academy date back at least a decade, but they did not end when Secretary Roche and General Jumper assumed their posts in the spring and summer of 2001. Indeed, some would conclude that these problems have gotten worse over the past 2 years.

Last Thursday, 23 members of this committee forwarded a letter to the DOD Inspector General requesting that he ensure a thorough review of the accountability of current Air Force leadership—including Secretary Roche and General Jumper. I ask unanimous consent that a copy of that letter be inserted in the record at this time.

Although Congresswoman Fowler testified that her panel found no evidence indicating problems with the performance of Secretary Roche or General Jumper in this matter, a complete assessment of accountability demands a comprehensive review, which extends through the current leadership of the Air Force.

In conclusion, I would like to recognize the fine work of Congresswoman Fowler's panel. Because of that panel's work, we now have a better understanding of the full extent of the problems at the Air Force Academy, the root causes of the problems, and what remains to be done so that we can guarantee a safe and secure environment for all cadets at the Air Force Academy. Congresswoman Fowler and the distinguished members of her panel significantly advanced the goal of restoring the Air Force Academy to the level of respect and trust that it must regain.

Chairman WARNER. Senator Levin.

#### STATEMENT OF SENATOR CARL LEVIN

Senator LEVIN. Thank you, Mr. Chairman. Let me welcome our three witnesses here today as you have, Mr. Chairman.

We have received two reports on the matter which has been described by our chairman. The two reports, as he referenced, are a Working Group Report and a report by the Fowler Panel. The Working Group Report was the result of a group coming into existence that was directed by Secretary Roche, and Ms. Walker, as the Air Force General Counsel, headed that Working Group. The Fowler Panel Report was the result of a panel consideration as directed by Congress, and the members of the panel were appointed by the Secretary of Defense. The panel's report was released to us just last week and was the subject of the hearing that the chairman has referred to on September 24.

Now, the findings of the two reports are inconsistent in a number of significant ways. One of the most significant inconsistencies is that the Working Group Report found that there was, "no systemic acceptance of sexual assault at the Academy, no institutional avoidance of responsibility or systemic maltreatment of cadets who report sexual assault." The Fowler Panel took issue with that finding, stating the following, "The panel cannot agree with that conclusion, given the substantial amount of information about sexual assaults and the Academy's institutional culture that was available to lead-

ers at the Academy, Air Force headquarters, and to the Office the Air Force General Counsel."

Now, the Working Group Report did not find leaders accountable for failing to change the culture at the Academy, while the Fowler Panel recommended that the DODIG conduct a thorough review of the accountability of Academy and Air Force headquarters' leadership for the sexual assault problems at the Academy over the last decade.

During our hearing, Ms. Fowler recommended that the DODIG review the accountability of "previous leaders," at the Academy and Air Force headquarters, leaving open the issue of whether the DODIG review should include an assessment of the accountability of current Air Force leadership. She did not modify the panel's formal recommendation that, by its own terms, did not limit review of accountability to past leadership. She indicated that a request for a review of the actions of current leadership was entirely up to us, but that they had found no reason to recommend such a review.

In order to ensure that there's no confusion about what we decided to do, we wrote the DODIG, under the chairman's leadership, and asked that the DODIG review include both past and present leadership. In our review, Mr. Chairman, I think you would agree, it is important that the actions of all the leaders, past and present, be documented and be assessed.

I think it is important to point out that we have not made a determination that any specific individual should be held accountable for failure of leadership. What we are saying is that the actions of all leaders involved need to be simply documented and assessed, because only after the facts are known can issues of accountability be appropriately determined.

So our minds are open concerning accountability, but we are determined that there be a thorough inquiry into the actions of all who were aware of the continuing reports of sexual assaults at the Air Force Academy to determine whether leaders took appropriate actions, based on the information available to them, to ensure the safety of the young women addressed to their care as cadets at the Air Force Academy.

Again, assessment of leadership actions can only lead to the documentation of facts, whichever way that falls. The letter that we wrote to the DODIG is consistent with the DODIG review that was called for by the Fowler Panel Report. This is the opportunity, which we look forward to, for our witnesses today to give us their assessment of the reports, which have been made available to us, as well as to any other comments which they might want to make. It is highly appropriate that they be given this opportunity.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator Levin. We'll include the letter to which you referred. We have over 20 signatures thus far. The committee issued that letter, following the Fowler Panel's testimony, calling on the DODIG to make certain that their examination covered those areas.

I would also like to have the statements of Senators Allard and Cornyn inserted in the record.

[The information referred to follows:]

JOHN WARNER, VIRGINIA, CHAIRMAN  
 JOHN MCCAIN, ARIZONA  
 JAMES M. SHROVE, OKLAHOMA  
 PAT ROBERTS, KANSAS  
 WAYNE ALLARD, COLORADO  
 JEFF SESSIONS, ALABAMA  
 SUSAN M. COLLINS, MAINE  
 JOHN ENGLISH, NEVADA  
 JAMES M. TALENT, MISSOURI  
 SAXBY CHAMBLISS, GEORGIA  
 LINCOLN D. GRAHAM, SOUTH CAROLINA  
 ELIZABETH DOLE, NORTH CAROLINA  
 JOHN CORNYN, TEXAS  
 CARL LEVIN, MICHIGAN  
 EDWARD M. KENNEDY, MASSACHUSETTS  
 ROBERT C. BYRD, WEST VIRGINIA  
 JOSEPH I. LIBERMAN, CONNECTICUT  
 JACK REED, RHODE ISLAND  
 DANIEL K. AKAKA, HAWAII  
 BILL NELSON, FLORIDA  
 E. BENJAMIN NELSON, NEBRASKA  
 MARK DAYTON, MINNESOTA  
 EVAN BAYH, INDIANA  
 HILLARY RODHAM CLINTON, NEW YORK  
 MARK PRYOR, ARKANSAS  
 JUDITH A. ANSLIE, STAFF DIRECTOR  
 RICHARD D. GIBBONS, DEMOCRATIC STAFF DIRECTOR

## United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6650

September 25, 2003

The Honorable Joseph E. Schmitz  
 Inspector General  
 Department of Defense  
 400 Army Navy Drive  
 Arlington, VA 22202-4704

Dear Mr. Schmitz:

On September 24, 2003, the Senate Armed Services Committee conducted a hearing to receive testimony from Congresswoman Fowler and other Members of "The Panel to Review Sexual Misconduct Allegations at the Air Force Academy" on the findings and recommendations contained in the Panel's report. During the course of that hearing, questions arose concerning the Panel's recommendation regarding "awareness and accountability."

As you know, the Panel's first recommendation was that your office, the DOD IG, "conduct a thorough review of the accountability of Academy and Air Force Headquarters leadership for the sexual assault problems at the Academy over the last decade. This review should include an assessment of the actions taken by leaders at Air Force Headquarters as well as those at the Academy..." In Congresswoman Fowler's opening statement in the hearing before our Committee, she recommended a DOD IG review of the accountability of "previous leaders" at the Academy and Air Force Headquarters, leaving open the issue of whether your review should include an assessment of the accountability of the current Air Force leadership, including Secretary Roche and General Jumper. A number of Members, during the questioning period of the hearing, stated that your review should not be limited to previous Air Force leadership.

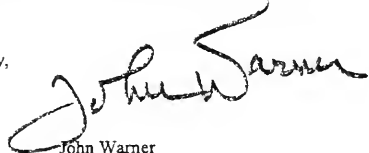
Therefore, we request that as you conduct your review in response to the recommendation of Congresswoman Fowler's Panel, you include an assessment of the accountability of current, as well as previous, Air Force leadership.

In addition, the Panel questioned omissions in the Air Force General Counsel's Working Group report stating its belief that "the Air Force General Counsel attempted to shield Air Force Headquarters from public criticism by focusing exclusively on events at the Academy." We request that you investigate this allegation, as well as the reasons for the omissions in the Air Force General Counsel's report, as identified by the Fowler Panel.

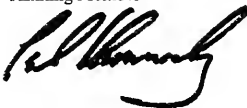
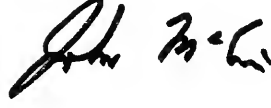
Sincerely,



Carl Levin  
 Ranking Member



John Warner  
 Chairman

Ben Nelson  
Mark Dayton

Susan Collins  
John Cornyn

Hillary Rodham Clinton

Jeff Sessions

Sarah Reeb

Markwayne Mullins

Bill Nelson

Robert C. Byrd

John Hickenlooper

Elizabeth Dole

Erin Borge

Larry Geller

Gavin Paterson

Shirley Chantler

Pat Roberts

Jim Talent

\_\_\_\_\_  
\_\_\_\_\_

John Ensign

[The prepared statements of Senators Allard and Cornyn follow:]

PREPARED STATEMENT BY SENATOR WAYNE ALLARD

Thank you, Mr. Chairman. I want to say how much I appreciate your involvement on this issue. Your interest has helped build momentum toward ensuring the safety of not only cadets at the Air Force Academy, but also those at West Point and the Naval Academy. Your previous experience as the Secretary of the Navy has been

invaluable as we sought to better understand the role of the Air Force headquarters in these matters. Again, I thank you for your leadership, Mr. Chairman.

I also wish to thank Secretary Roche and General Jumper for their commitment to the cadets at the Air Force Academy. In January, the chairman and I notified the Air Force of the allegations of sexual assault and Secretary Roche and General Jumper responded immediately.

They instructed the General Counsel to begin a comprehensive investigation and personally traveled to the Air Force Academy to speak to the cadets about these allegations. Last week, members of the Fowler Commission stated before this committee that they were impressed by Secretary Roche and General Jumper's response to these allegations. I also know that many of the victims, particularly of those who approached my office, greatly appreciated the personal involvement of the Air Force's senior leadership. It has made a difference to those affected the most by these assaults.

While I believe the Fowler Report was a good examination of the Air Force's investigation, as with most panel reports, it left us with several questions that need answers. I appreciate your willingness, Secretary Roche, General Jumper, to try and answer some of these questions for the committee. Though a thorough discussion on the Air Force's investigation is necessary, let me say that we must keep our eye on the ball and not forget to continue to make sure the Air Force reforms are working.

We must remember that cadets are still at the Academy and a climate of fear continues to persist. The results of the superintendent's most recent Social Climate Survey further indicate that much work remains to be done. Sadly, as many as 25 percent of male cadets still do not believe women should be at the Academy and a large percentage of women still fear the reprisals for reporting a sexual assault.

So as we discuss this matter, we need to focus on the Academy and the cadets who will some day be the leaders of our Air Force. Since we all have nominated cadets, we all have an obligation to ensure that the measures implemented by the Air Force improve the safety of all cadets. We cannot afford to overlook this important responsibility.

Thank you, Mr. Chairman. I look forward to the question and answer period.

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#### PREPARED STATEMENT BY SENATOR JOHN CORNYN

I would like to thank Senator Warner for holding this important hearing. Last week, the committee received critical testimony from members of the Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy, headed by Congresswoman Tillie Fowler. The panel provided several recommendations on how to correct the unacceptable problems at the Air Force Academy. The panel's first recommendation was for the Inspector General of the Department of Defense (DODIG) to conduct "a thorough review of the accountability of Academy and Air Force leadership for the sexual assault problems at the Academy over the last decade."

I joined Senator Warner, Senator Levin, and other members of the Armed Services Committee in sending a letter to the DODIG requesting that the Inspector General conduct a thorough review of the Academy and Air Force headquarters leadership as recommended by the Fowler Panel. We also asked that the DODIG include an assessment of the accountability of the current leadership as well as the previous leadership.

As a United States Senator, I am honored to nominate young men and women to attend our Nation's service academies. We have a solemn obligation to ensure the Air Force Academy, as well as the other service academies, are free from the fear of sexual harassment. We will not tolerate anything less than an environment that fosters the lofty ideals on which this country was founded. Sexual harassment, in any form, is simply not acceptable.

As we all know, the nomination of Secretary Roche to be Secretary of the Army is currently before the committee. I believe we should wait for the conclusion of any ongoing executive branch investigations before we proceed with the nomination. In order to make an informed decision on the nominee, it is important that we have all the facts. I am encouraged by the fact that the Fowler Panel noted they were impressed with the leadership of Secretary Roche and General Jumper, but the seriousness of the problem at the Air Force Academy demands that we have a complete understanding of the role of the Air Force leadership—past and present. This is even more critical with the allegation in the Fowler Panel report that "the Air Force General Counsel attempted to shield Air Force Headquarters from public criticism by focusing exclusively on events at the Academy."

As I noted in my testimony in last week's hearing, we cannot afford to allow the problems of the past at the Academy to continue. I look forward to working with Chairman Warner and the Air Force to ensure that the young women who attend the Air Force Academy are treated with the dignity and respect that they deserve.

Chairman WARNER. Several members have indicated they would like to make a quick comment.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I have to get back to the committee that I chair. I want to make just a very brief comment, because I will not be here for the round of questioning.

First of all, I'd like to go back to the Tillie Fowler Panel, and they point out one problem that I think needs to be called to our attention. "The panel is well aware of the difficulty of holding accountable those who long ago left their positions of responsibility and now are beyond the reach of meaningful action by the Department of Defense." I think that speaks for itself.

They went on to give a history of this. I only will mention that, "Since at least 1993, the highest levels of Air Force leadership have known of serious sexual misconduct problems at the Academy." The report goes on to talk about how not much was done, in spite of that, until these two witnesses before us arrived on the scene. Reading further, "Recent widespread media attention caused the Air Force to address the problem of sexual assault at the Academy. In March of 2003, Air Force Secretary James Roche and Air Force Chief of Staff John P. Jumper announced a series of directives in policy improvements at the Academy known as the Agenda for Change." It goes on to describe that, but the summary is, "The Agenda for Change is evidence that Air Force, under Secretary Roche's leadership, is serious about taking long overdue steps to correct the problem in the Academy." Finally, "The panel is encouraged by a renewed emphasis in Washington to immediately address and solve this problem. We are impressed with the leadership of Secretary Roche and General Jumper. After a decade of inaction and failures, Secretary Roche made a step towards serious reform this year by rolling out his Agenda for Change and replacing the Academy's leadership team with one that has been quick to take action." In other words, she's applauding what they've been doing.

Now, I served in the House of Representatives with Tillie Fowler. She's a very thorough person. One of the problems that I have, Mr. Chairman, with hearings like this, is we'll come in here and listen for maybe 3 hours while this group of experts, seven people who have never been challenged, in terms of their credentials, spent 90 days, perhaps 500 hours working. I talked to Tillie Fowler, and I am very satisfied they did their due diligence, and feel that we should really commend these two gentlemen for taking action when nobody else would.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you.

In my opening statement, I abbreviated it to save time, but I specifically commended Tillie Fowler and her panel for the work that they did.

Are there other colleagues who want to make a quick observation, and then we'd proceed with testimony?

Senator ALLARD. I just want to commend you for stepping forward, your leadership when I brought this to your attention, and joining me in dealing with this very serious problem at the Academy. Of course, we're all worried about the long-term security of all the cadets at the Academy.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you.

Again, these matters were brought to the attention of this committee by whistleblowers and not the Department of the Air Force uncovering it on its own initiative. This committee has a fiduciary responsibility, Mr. Secretary, to the entire Senate. When we pass on a nomination or an issue and make recommendations to the United States Senate, we do so hoping that they will attach credibility to our actions and our judgment, and that's why we're proceeding with great care on this very sensitive and important matter.

Now, Mr. Secretary, if you would lead off.

### STATEMENT OF HON. JAMES G. ROCHE, SECRETARY OF THE AIR FORCE

Secretary ROCHE. Thank you very much, Mr. Chairman, Senator Levin, members of the committee.

First of all, Mr. Chairman, I completely agree with the role of this committee in nominations. I was a staff director for the minority here. I have always observed that it approached these matters with great diligence, and I fully respect that, sir.

Chairman WARNER. Thank you for that reference. You have a very good record before this committee, not only as staff director, but, indeed, in most actions. I think there are one or two with which several of our colleagues disagree. We're not going to get into the leasing arrangement now, but—[Laughter.]

Secretary ROCHE. Please, Senator.

Chairman WARNER.—other than that, you've tried hard.

Secretary ROCHE. Thank you, sir.

Let me begin today by thanking the committee for inviting General Jumper, Ms. Walker, and myself to update you on our actions regarding the Air Force Academy, as well as to provide you with some context for evaluating our approach to these problems and decisions we have made.

Mr. Chairman, I have a longer statement. I ask that it be put in the record. I'll try and summarize it.

Chairman WARNER. Your statement and those of all witnesses will be included in today's record in their entirety.

Secretary ROCHE. We also would like to commend the work of Congresswoman Fowler and her distinguished team of experts. We learned a lot from her and her colleagues, and we agree wholeheartedly with the recommendations contained in her report. However, we want you to know, to the best of my knowledge and to the best of General Jumper's and Ms. Walker's knowledge—I'll let General Jumper and Ms. Walker speak for themselves—there was no shielding and no hiding in the Working Group Report. We were looking for history. We were looking for facts. We were looking for just the facts, so they could speak for themselves, sir.

The first point I would like to make to you, Senator, is that General Jumper and I believe that the cadets at the Air Force Academy this moment are safe, that we have put in the procedures, the patrols, lots of things to ensure that the parents of our cadets can sleep tonight at ease, knowing their daughters are safe, and that their sons are safe, as well.

Our singular purpose at the U.S. Air Force Academy is to produce officers of character, who are prepared to lead airmen in the profession of arms, potentially into harm's way.

Now, General Jumper and I, to the best of our knowledge, have been more engaged and more probing than any other secretaries and chiefs in the history of the Air Force. In my 19 months, up to January, and General Jumper's 16 months, as of January 3, we engaged in a review of the honor code, working with Retired General Mike Carns, who, by the way, had a daughter in attendance at the Air Force Academy.

We were tipped off by a reporter that there were issues about recruited athletes, and we dug into that. To make the point, we, after reviewing what was happening, put a restriction on the number of recruited athletes. We spent a great deal of time in the technical curriculum, because it was starting to slip, and it was starting to shift over to too many cadets going to liberal arts majors because of the workload. We fixed that, made the core curriculum much more technical, and also introduced multiple language studies. We reinstituted the basic flying program, so that could fit in. We invigorated our sense of military professionalism by creating the four-star lecture series, where we ask each of our four-star generals to come to the Academy at least once a year and to lecture and be with the cadets involved.

We took actions with failures, as well. There was a case of a 13-year-old young woman who was assaulted at a summer camp. That cadet was tried and placed in jail. There are eight court-martial convictions for drugs. There was a rape perpetrated in Los Angeles by one of our cadets. That cadet is in jail. We worried about credit-card theft, embezzlement, pornography, a stolen textbook ring, and we took firm action against each of the cadets involved.

You may recall, Mr. Chairman, that there was a skit put on by the English Department, which, in our estimation, was inappropriate. It was an issue that came to the attention of Senator Allard. By the time I got back to my office, I had a copy of the same letter, and we found it to be something we did not want to see in our Academy. We removed the chairman of the department and also the number two, and later had that particular professor convinced that he should no longer be a permanent professor in our Air Force.

We visited the Academy repeatedly. But at no point during this entire period were we informed about a major problem with gender relations or sexual assault. We spent time with alumni, alumnae, board of visitor members, cadets, parents, many of whom are active-duty officers with daughters and sons at the Academy, faculty, and ex-faculty. Two members of our staff are women with extensive experience at the Academy. I even maintained a dialogue with the superintendent of the Naval Academy in an attempt to gain insight into potential problems on the basis that the competing academies

would probably know more about the other academies than people in their own service, and I was helped greatly by the superintendent of the Naval Academy. Yet there were no suggestions of a widespread gender problem. The subject was not addressed openly by either officers or cadets. But had we received such information, I assure you our actions would have been as firm and swift and decisive as our approach to the other issues we have faced.

Now, it was January 2, at the end of the winter holiday that I received, among others, a copy of an e-mail from a cadet, and it was an extraordinarily long and pained e-mail, and I was very disturbed by its content. Within 24 hours, I asked the General Counsel to try and work to arrange to find that cadet. It was written with a pseudonym. We put feelers out and offers. The cadet did come forward to speak with us over at the General Counsel's office. In fact, two cadets came. They also had a chance to speak with Senator Allard and his staff. Senator Allard and I talked about this early on and decided we had a major problem that was much deeper.

Within days, I chartered a Working Group to focus on the problems at the Academy to tell John and me what, in fact, we had on our hands, how did it get this way, and what can we do about it? We wanted a factual history of the last 10 years at the Academy, the 10 years being the period from 1993, when General Hosmer had put in many changes to address a problem which had occurred in the prior 10 years. Days later, recognizing that we were, in one case, looking at the procedures and what had occurred at the Academy, I directed the Air Force Inspector General to start a parallel investigation to look at the complaints against commanders and assess the potential command accountability on a case-by-case basis so that we had a parallel path, looking at each case. In the cases, a number of the victims were concerned about how they were treated, concerned about issues of how the command responded, and we wanted to have that documented in a due-diligence manner. At the same time, the Working Group was looking at procedures, why did this happen, and why didn't we know about it?

Later, based on your request, our Air Force IG was joined by the DODIG, who we believe provided welcome oversight, and I met with them as soon as they received your letter, welcomed them, and said, "This is good, because it'll mean that our own IG will have some sense of oversight and will, therefore, be more credible," and that they were going to both oversee what our folks were doing, as well as to look at broader issues of accountability.

We took, as our first responsibility, the safety of the cadets and measures to encourage reporting of any assaults, and to begin to alter the culture at the Academy that allowed this to develop. Headquarters accountability was an issue that came up much later, because we recognized that this three-star command was like any other three-star command, and there was not a lot of infrastructure overseeing what happened at the command because we don't normally do that in any of our other three-star commands. Yet it meant that we were not being informed of things. We did not know what was going on in the sorts of detail that we now feel is necessary.

I believed, as the Working Group progressed, that they should focus on the issues at hand, because we knew that the parents of the class of 2007 were going to make their decisions, or work with their sons and daughters to make their decisions, probably in April and May as to whether or not to show up in June, and our great concern is that we might have lost the confidence of the American people. Therefore, we wanted to work quickly to put things in place so as to regain that confidence and to give us a chance, and we did that.

As we went further, it was quite clear that we did not have the leadership and management infrastructure at headquarters, so we built an entire infrastructure arrangement that gives us executive steering group insight—the vice chief of staff, the assistant secretary for manpower—on a continuing basis so that we won't have to dig for things or wait for someone to bring it to our attention, but, in fact, can have insight on a continuing basis.

In August, I was shocked to see the four pages you referenced earlier, Mr. Chairman. I had never seen those. I had no knowledge of them. General Jumper had no knowledge of them. I asked Ms. Walker; she had no knowledge of them. It first came to our attention with an article in the newspaper. It then took us at least a week to find them, and they were buried in an IG report. It was shocking that the Air Force, both in 1996, when that came forward, and also in 2000, when you asked the issue be readdressed, that people in responsible positions ignored the underlying situation and viewed it so narrowly.

Senator LEVIN. Could I interrupt you? Because I don't know what four pages you're referring to.

Secretary ROCHE. In the material that the chairman sent over to the Assistant Secretary of Defense for Personnel and Readiness, in July 2000, there was a four-page attachment, which listed an assessment of what was happening at the Academy written in 1996. It's in outline form, but it was attached to that. In fact, it was the basis that was used to evaluate that the officer in question and his nomination, how did he do with that.

Chairman WARNER. I was chairman at the time, Senator Levin, and it's that chapter to which I alluded in my opening statement that this committee, frankly, got burned one time, and we're not going to get burned again.

Secretary ROCHE. Yes, sir. I fully understand.

What fascinated me was two parts, Mr. Chairman. One, that people in responsible positions could read that and not recognize that it wasn't a narrow issue of a particular officer, should he be promoted or not, but there was a backdrop to that. One should have asked the question, "Well, is it okay now?" or, "What was it?" In fact, nothing was done. It's hard for me to imagine that anybody in a responsible position could look at that and not ask a whole lot more questions. It started to answer the question, "Why didn't the headquarters of the Air Force know what was going on?" In fact, those four pages made the point, they did.

This came, as I say, in August. The Working Group's report was finished in June. I have no doubt that had the Working Group had those four pages, that they would have taken the section on future studies, where they said that the headquarter's relationship should

be examined, they would have built a much richer terms-of-reference. They would have used this. Then I would have argued with my boss that this is something that the DODIG should look at or DODIG, not the Air Force, because I'd be looking at my predecessors, who were in a different administration, and no matter what conclusion we came to, it would be somehow doubted. But it was absolutely appropriate that the DODIG look at that. So I support Ms. Fowler's position in that position especially.

Chairman WARNER. Let me interrupt. The term "headquarters" is used in a number of documents. I want to make it clear that is the Department of the Air Force over which you are the senior responsible presiding civilian.

Secretary ROCHE. Yes, I am.

Chairman WARNER. The Department is, where you, as Chief of Staff, and your deputies——

General JUMPER.—and the Superintendent of the Air Force Academy, Mr. Chairman, reports directly to me.

Chairman WARNER. Right.

Senator MCCAIN. So it's all one big oversight of information that was sent to you but somehow got lost.

Secretary ROCHE. Senator, I don't know why it didn't get to me or why it didn't get to General Jumper. The irony, Senator, is that it remarkably agreed with what we had found. If it had disagreed, one could imagine not wanting to see one's thoughts disturbed. It absolutely agreed, and that was the shock. If, in fact, the situation looked like that in 1996, and it's the same situation that we formulate in 2003; it's unlikely that it was bad, got better, and got bad again. It meant that over a period of time, it was that way. This completely agreed. Even some of the words were identical. For instance, the difficulty of how confidentiality was treated was pointed out in 1996 as a problem; it's the same situation we discovered in 2003. So I only regret that it was not brought to my attention, from anywhere it might have been.

Senator MCCAIN. Communications from the Chairman of the Armed Services Committee are not brought to your attention.

Secretary ROCHE. I'm sorry?

Senator MCCAIN. Communications from the Chairman of the Armed Services Committee are not brought to——

Secretary ROCHE. Oh, Senator, in this administration, absolutely, something from the chairman would be brought to my attention. This was in the prior administration——

Senator MCCAIN. Oh, I'm sorry.

Secretary ROCHE.—and it's probably in a file cabinet someplace. It was not picked up and dealt with by the Office of Secretary of Defense then. I agree, the Air Force looked at this very narrowly instead of recognizing that it was a broader problem and should have gone immediately to see if the situation in 2000 was the same as described in 1996.

In conclusion, Mr. Chairman, there have been failures at the Air Force Academy. Of that, there is no doubt. General Jumper and I have been and remain intensely focused on correcting these problems and restoring the confidence of the American people in their Air Force Academy. Our focus throughout has been of fulfilling our goals of educating, training, and inspiring Air Force leaders of the

highest character and integrity, ensuring the safety and security of every cadet, and enhancing the trust and confidence of the American people in the Academy.

I'm proud to point out, Senator, in the midst of all of this, the work that we did on the rushed basis that we did it is measured by the fact that in June we had the fourth largest class of women to begin the Air Force Academy in the history of the Academy. The parents are giving us a chance. We have to make sure we live up to it. We will stay this course, Mr. Chairman.

Recent climate surveys show that the attitudes there are going to take a long time to change. In fact, General Jumper and I spent Friday in Colorado Springs with the leaders of the Air Force Academy, and one of our concerns is that they might become discouraged because things cannot happen fast.

The good news is that the confidence of the women cadets in the new leadership team and its desire to address these issues has become quite high. With what we have learned in our interactions, the efforts of the Working Group and the Fowler Commission, and what we will learn from the IG investigations, which are ongoing—they will not be complete until December—we are prepared to deal with issues of accountability expeditiously once they're finished.

We appreciate the support you and the Members of Congress have given us, and we sincerely appreciate the suggestions you have provided throughout our response to this crisis. I am especially grateful to Senator Allard for the time he has spent working with me on this, and working with General Jumper.

Again, we appreciate and applaud the work of the Fowler Commission. Thank you, sir. I'd be glad to answer your questions.

[The prepared statement of Secretary Roche follows:]

PREPARED STATEMENT BY HON. JAMES G. ROCHE

Mr. Chairman, Senator Levin, members of the committee. Let me begin today by thanking the committee for inviting General Jumper, Ms. Walker, and myself to update you on our actions regarding the Air Force Academy, as well as to provide you with some context for evaluating our approach to these problems and the decisions we have made.

Mr. Chairman, you and members of this committee have been actively involved in highlighting the scope and nature of the sexual assault problem at our Academy. You've offered us your thoughtful suggestions since this issue was first brought to our attention, and you were responsible for the appointment of an independent panel of American citizens to review this matter.

We commend the work of Congresswoman Fowler and her distinguished team of experts. Throughout their review, we required that our staff cooperate fully with the panel because our goal is the same as yours—to provide for the safety and security of our cadets, and to ensure that we produce officers worthy of the special trust and confidence of our Nation. We are grateful for Ms. Fowler's diligence, as well as her valuable recommendations. The commission has done a great service to the institution and to our Air Force. We have learned a lot and we wholeheartedly agree with her recommendations. However, I would want you to know that, in the report of the Working Group, there were no shields or any attempts to do anything other than to portray the facts so they might speak for themselves. We look forward to working with the Secretary of Defense and you as we move forward to study and act on the panel's findings.

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Mr. Chairman, from the very beginning of my tenure as Secretary, I have been intensely focused on sustaining our position as the world's finest air and space force. We do this, not merely by investing in platforms and systems, but principally by investing in people. Nowhere is this more important than one of our premier sources

of training future leaders, the Air Force Academy. This is America's Academy. Because of the unique position of responsibility these officers will assume upon graduation, we owe it to you—and the citizens you represent—to get it right.

At the Academy, a singular purpose drives us: producing officers of character who are prepared to lead airmen in the profession of arms, potentially into harm's way.

Thus, we have been shocked and appalled to learn of the character failures of some of our cadets, and possibly, even some of our graduates. We do not condone these criminal acts, nor do we tolerate a culture that discourages the reporting of those who would perpetrate such acts. We must create an environment of trust and allegiance, not to misplaced notions of loyalty, but to standards of officership that will not tolerate criminal behavior or the attitudes that allow sexual harassment and assault to occur.

Shortly after I assumed my post on June 1, 2001, General Mike Ryan—our Chief of Staff at the time—and I talked about the Air Force Academy and about the fundamental obligation we have as custodians of this great institution. From the beginning of my tenure, one of my principal goals has been to strengthen this institution—to reinforce the foundations that have produced our success, and to make changes that would advance our mission there. Working closely with Generals Ryan and Jumper, and long before the sexual assault issue was brought to our attention in January of this year, we have been actively engaged on Academy issues.

We sought to reinvigorate a sense of military professionalism. In the last months of 2001 and the first half of 2002, we had court-martialed more cadets than we had in the previous 10 years at the Academy—eight for drugs alone. We had cadets involved in credit card theft, embezzlement, pornography, sodomizing a minor, and a stolen textbook ring. We took firm action against each of them. This level of misconduct convinced me that we needed to invest yet more of our personal time and effort to make positive changes at the Academy, and that we have.

During my term to date, I've visited the Air Force Academy more than any other Air Force installation or operating location outside of Washington—nine times. General Jumper has been there repeatedly as well. I believe that no previous Secretary of the Air Force or Chief of Staff has devoted more time and effort to the Air Force Academy than General Jumper and myself. In all these endeavors, our first concern was the welfare of the cadets at the Academy. I would like to review some highlights:

- In October 2001, we went to Colorado to consider and make changes to the Academy's Honor Code system. Working with retired General Mike Cairns, who chaired an independent report on the honor system, we made it more responsive, added due process steps, and reaffirmed our commitment to the values that underlie the code.
- Immediately following this review, we took on the issue of recruited athletes. We were accepting an increasing percentage of recruited athletes. In March 2002, we issued our guidance, limiting the number of recruited athletes to no more than 25 percent of the incoming class. Again, we took this step to get the institution refocused on training, education, and character development of future Air Force officers.
- In May 2002, I went to the Academy to focus on cadet military professionalism. During this meeting, I directed the establishment of a Senior Officer lecture series, wherein superb Air Force leaders—officers like General Buzz Moseley and Chuck Wald—would take a greater hand in the training and development of our future officers. General Jumper also encouraged every 4-star officer to visit the Academy annually. I concluded this visit by doing what I want all of our leaders doing there—teaching cadets personally. I chose to teach a case on acquisition ethics. General Jumper also taught a class.
- Over the summer of 2002, we took on the curriculum issue. We conducted a complete review of the curriculum and made significant changes to enhance the science and technology requirements for cadets. We established a new Systems Engineering major, expanded language requirements for liberal arts majors, and reinstituted basic airmanship training for the cadets.
- While we were working on these items, we cracked down on those who fell below standards: we clamped down on those involved with illicit drugs. We imprisoned the cadet who assaulted the young lady at summer camp and implemented new screening rules for camp volunteers. Further, in this case, we took charge of the relations between the Academy and the young lady's family due to the poor performance of some of the Academy personnel involved. We removed a permanent professor—a department head—who was responsible for an inappropriate and sexually explicit skit performed by some cadets.

We have tackled all these issues—the Honor Code, recruited athletes, the curriculum, issues of character and leadership development, enforcement of standards, additional training for staff, and much more—in my first 19 months on the job and General Jumper's first 16 months at the helm. At no point during this entire period were we informed about a major problem with gender relations or sexual assault. We spent time with alumni, alumnae, cadets, parents—many of whom are active duty officers—with daughters as well as sons attending the Academy, faculty, and ex-faculty. Two members of our staff were women with extensive experience at the Academy. I even maintained a dialogue with the Superintendent of the Naval Academy in an attempt to gain insight into potential problems. Yet, there were no suggestions of a widespread gender problem. This subject was not addressed openly by either officers or cadets. Had we received such information, I assure you our actions would have been as firm and swift and decisive as our approach to the other issues we faced.

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When we received a single e-mail from a cadet in January of this year, we were disturbed by its content, and the pain that was in the message. We contacted the author of the e-mail and we asked her if she would be willing to come in to talk to our representatives. She did so, and brought a former cadet as well. What they had to tell raised serious concerns.

Based on these reports—as well as reports to Members of Congress, especially Senator Allard—we took immediate action. We chartered a Working Group in January, under the leadership of the Air Force General Counsel, the Honorable Mary Walker. In our charter to the team, we specifically and intentionally focused on determining the scope of the problem at the Academy, and what did we need to do to begin to fix it. What went wrong? How could it happen? How long has it been going on? We asked them to undertake a comprehensive review of the Academy programs and practices that were designed to deter and respond to sexual assault incidents, and to report their findings with respect to the responsiveness, effectiveness, and fairness of our current programs. We wanted facts. We needed to change the Academy and earn again the confidence of the parents of our cadets—especially those cadets considering entering the class of 2007. Our charter was very specific:

- Review the current programs, policies, and practices at the Academy as compared to the rest of the Air Force;
- Review the cadet complaints and provide an opportunity for cadets, former cadets, and other members of the Academy community to make constructive comments;
- Evaluate how well the Academy's process to assist victims and punish offenders has worked in the last 10 years; and
- To offer recommendations to us as a basis for us to make changes at the Academy.

Time was of the essence. We did not ask them to investigate, report on, or draw conclusions on the activities of the headquarters. We wanted facts and factual history, not speculation. Our immediate and compelling focus was to provide an environment for our cadets free from sexual assault and sexual harassment while ensuring that if a sexual assault did occur, the crime would be reported, the victim would be supported, and justice would be done. Within a week or so, I also directed the Air Force Inspector General to undertake a parallel investigation into every case where a victim felt that justice had not been done so as to assess command accountability. Furthermore, I directed Ms. Walker to develop a factual history in the report of the last 10 years at the Academy to provide General Jumper and me with the basis for evaluating how our officers dealt with what they found there.

While the Working Group and the IG team were doing their work, General Jumper and I repeatedly went to the Academy to personally engage with the cadets and the leadership. I addressed the entire student body and the assembled faculty in February during a conference on Character and Leadership Development. The following week, General Jumper did the same. We made it absolutely clear that we were going to fix this problem, and that the cadets could expect significant change, not just in matters related to sexual assault, but in the entire Academy climate.

To learn, we reviewed the work of the Working Group as they developed history and diagnosis. When we received Ms. Walker's interim report in March, we personally assembled a group of officers and leaders with experience at the Academy, other academies, and Air Force ROTC to help us review an agenda that would allow us to make swift and decisive changes at our Academy.

Mr. Chairman, we want to be very clear how we viewed our responsibility: first and foremost, protect our cadets, reestablish the confidence of the parents of our ca-

dets, attack any barriers to reporting, and begin to change the culture which had developed over the past two and a half decades that tolerated sexual harassment.

First, we expeditiously pursued our review at the Academy and issued our Agenda for Change because of our overarching responsibility to protect the cadets who were at the Academy and the incoming class. We were compelled to immediately address these issues so we could reassure the parents of our current and future cadets that their children would be safe. I'm proud to report that the class of 2007 has the fourth largest number of women in the Academy's history.

Beyond all other matters, we were committed to eliminating the climate at the Academy that discouraged reporting of sexual assaults and encouraged a misplaced loyalty to protecting those who committed criminal acts. Our focus was on the Academy, its current cadets, and the incoming class. Our concern was to act to make swift and decisive change.

We viewed that as our responsibility as the Air Force's senior leaders. It is why we issued an Agenda for Change that was a beginning of an overall, intensive effort to fix the problems at the Academy. We needed to make leadership changes to get the process started, and attack the entire climate, from basic cadet life and staff training to the specific processes by which we deter and respond to sexual assault. The preliminary Working Group Report was very helpful in giving us diagnoses and raising issues needing to be addressed.

The new Academy leadership team—a team General Jumper and I assembled after interviewing many candidates—and our Executive Steering Group at the Headquarters have taken the Agenda for Change and the General Counsel's final report and translated them into 63 action items. We've established a headquarters oversight mechanism that is tracking implementation as well as providing support to Academy leadership. Our team just returned from 2 weeks at the Academy where they reviewed our progress to date. This construct will be made permanent and will ensure that our successors maintain the needed attention on the institution.

As of today, we can report that we have made progress in implementing these changes, although we have a great deal of work yet to do, as Ms. Fowler correctly notes in her report. Generals Rosa and Weida, and Colonels Gray and Monteith are officers of action and are the right leaders at the right time for the Academy. We have opened up the Academy to public scrutiny, and have invited all concerned with resolving these problems to offer their criticism and inputs. We have invited the cadets to be part of this process. We have worked with the other services and the leadership of the U.S. Military Academy and the Naval Academy to capture their best practices. We have been open and direct with the Fowler Panel, the DOD Inspector General, the Board of Visitors, and this committee, as well as your counterparts in the House.

We recognize that our initial blueprint for action may need modifications, as in the case of our approach to a "confidentiality track" for victims. As we have already done, we will continue to modify our actions, to incorporate best practices, to ask help from outside experts, to bring the Academy in line with the processes used throughout the Air Force, and to ensure that we continue the process of changing the culture at the Academy.

As recent surveys have shown, changing attitudes will be something we can't solve in a matter of months, and significant problems still exist. While I feel confident that we have assured the safety of our cadets, it is disturbing to read in our latest cadet climate survey that more than 20 percent of our male cadets believe that women do not belong at the Academy. This calls into question our admissions procedures. More disturbing, these attitudes seem to have spread as cadets become more senior over time. In that same survey, however—which General Weida and Colonel Gray briefed to us just last Friday—our Freshman cadets reported they are confident in their new leadership, less tolerant of honor code violations, and are more likely to confront their peers. Further, our women cadets overwhelmingly expressed confidence that our new leadership team is serious about addressing issues of sexual harassment and assault. We need to nurture those attitudes, and I'm confident that our new leadership at the Academy is moving in the right direction. We need to ensure that they do not become discouraged with the slow pace of progress.

It will take strong leadership and a consistency of purpose to sustain this movement. Even though we've been at war as we've responded to this crisis, it's received no less attention than it would have during peacetime. We remain engaged, and will continue to take decisive action on matters of leadership, training, and the enforcement of standards at the Academy, and throughout the Air Force. This is our commitment to you and all those we serve. It is what the American people expect of those entrusted with their sons and daughters and the security of this Nation.

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Mr. Chairman, there have been failures at the Air Force Academy; of that there is no doubt. General Jumper and I have been and remain intensely focused on correcting these problems and restoring the confidence of the American people in their Air Force Academy. Our focus throughout has been on fulfilling our goals of educating, training, and inspiring Air Force leaders of the highest character and integrity, ensuring the safety and security of every cadet, and enhancing the trust and confidence of the American people in the Academy. We will stay this course. With what we have learned from our interactions, the efforts of the Working Group and the Fowler Commission, and what we will learn from the IG investigations, we are prepared to deal with issues of accountability expeditiously.

We appreciate the support you and the Members of Congress have given us, and we sincerely appreciate the suggestions you have provided throughout our response to this crisis. Again, we appreciate and applaud the work of the Fowler Commission. Thank you, I will be happy to answer your questions.

Chairman WARNER. Thank you very much, Mr. Secretary.

I think the record, at this point, should reflect, when you made reference to the letter that I sent, the Secretary of the Air Force at that time was Whit Peters; Chief of Staff, General Ryan. Perhaps in the Q&A—I don't want to take up time now—you could tell us whether or not you went back and asked them what happened; why that wasn't addressed.

Senator LEVIN? Any further comment on the record? Because otherwise we'll go now to the General Counsel.

Senator LEVIN. Perhaps just one question, if you could clarify. The Air Force IG was a member of the Working Group?

Secretary ROCHE. There were members of the IG staff on the Working Group.

Senator LEVIN. Not the IG.

Secretary ROCHE. No, sir.

Senator LEVIN. Okay.

Secretary ROCHE. No, sir.

Senator LEVIN. The staff members—according to Tillie Fowler—

Secretary ROCHE. Oh, I'm sorry. The General Counsel, correct. He was on the overall panel.

Senator LEVIN. That's what it says in the Fowler Report.

Secretary ROCHE. Yes, sir. General Hewitt.

Senator LEVIN. And was it he who did the review in 1996?

Secretary ROCHE. No, sir. He arrived in 2000. He arrived 2 weeks before the answer was given back to the committee. It happened within the first 2 weeks of his tenure. In 1996, he was off flying airplanes.

Chairman WARNER. General Jumper.

#### **STATEMENT OF GEN. JOHN P. JUMPER, USAF, CHIEF OF STAFF, UNITED STATES AIR FORCE**

General JUMPER. Mr. Chairman, Senator Levin, members of the committee, thank you for the opportunity to address you all today. I also want to thank you for your continued support of our Air Force men and women, and for your concern about the cadets at our Air Force Academy.

I'd like to also add my appreciation to that expressed by Secretary Roche to Ms. Fowler and the members of her committee for the report and its recommendations, and I add my full support to those recommendations.

Mr. Chairman, I assumed my present position on the 6th of September 2001. In addition to the events of September 11, one of the initial topics of discussions between Secretary Roche and myself was about the Air Force Academy. He had been directly involved with my predecessor, General Mike Ryan, on a number of issues that he's outlined to the committee this morning, in doing due diligence on issues that were already underway, to include, I might say, a formal review of the honor code with General Mike Carns that what was reported out to us shortly after I arrived in my new position.

He could have, at any time, turned to me and said, "Jumper, the superintendent reports to you, you take all these things and go off and report back to me," but he knew the urgency of the day that was dictated by the events of September 11, and we worked on these things together from the very beginning. As I said, Mr. Chairman, as the Air Force Chief of Staff, the Superintendent of the Air Force Academy does report directly to me. We worked these issues as a team, and I do feel the responsibility for what does happen at the United States Air Force Academy.

Indeed, we're both engaged at many levels of the Academy issues. During my many trips to the Academy, I had occasion to talk to children of general officers who go to the Academy. My own daughter went out and participated in an ROTC program in the summer of 1996 at the Air Force Academy, spent the summer there. I attended many athletic events. I had the opportunity to be with many cadets on many levels, both formal and informal, with the alumni and with their parents. On no occasion during any of those times, during my initial tenure as the Chief of Staff of the Air Force, was any problem with regard to the abiding sexual climate there ever brought to my attention, although other problems were, of the type that Secretary Roche mentioned, and were acted upon.

Then with the arrival of this e-mail on January 2, 2003, I can tell you—I was there—Dr. Roche reacted immediately to that e-mail with an immediate answer to the General Counsel to get underway with the appropriate committees and boards that conducted the subsequent investigations.

Very quickly thereafter, I want to emphasize, there was a parallel effort to get the Air Force Inspector General underway on looking thoroughly at all of the techniques and the processes that went into the investigations that took place, to make sure that the leadership at the Academy reacted to those properly and that the processes and procedures were as they should have been, and we stepped out on that quickly.

Our focus at the immediate time was to focus on, as the Secretary said, when the new cadets would arrive at the end of June and to get a letter out to their parents to outline quickly to them the steps that we thought were necessary to assure the safety of their people. Many of those steps had to do with the culture and the character of the Academy that we knew had to change, but we also knew that nothing was going to change unless the cadets themselves were a part of that change. Those are points that were pointed out in the report by Ms. Fowler.

The subsequent Agenda for Change that was published by the Working Group focuses on a great deal of—pardon me?

Secretary ROCHE. Published by us.

General JUMPER. That was published by us, exactly right, released by us.

The words that have to do with character, integrity in the preamble of that document are largely words that came from my own pen and show the conviction that I personally have to the long-term culture and integrity of the organization.

We also undertook, with the help of the Alumni Association, to begin work on a new Center for Character and Leadership Development that we will join with the Alumni Association to open as a place where formal research on this thing can be done and made available to all.

We learn more about this situation every day, Mr. Chairman, as we continue to probe and reports continue to come in. So the Agenda for Change is, indeed, a living document that will continue to be updated as changes dictate. As we tend to find what elements of the agenda work and don't work the best, adjustments will be made.

Mr. Chairman, I think that the Secretary and I have, indeed, been engaged, and engaged actively, in this problem, and we will continue to be engaged, understanding that this is a long-term problem. This is not one that we will address, as tended to have been done in the past, with a quick solution. We understand that the problem took years to develop, and the solution will take a long time for us to implement. But we are engaged in the long term. We intended, with the Agenda for Change, to institute changes that were, indeed, for the long term.

But I reiterate that I am the one responsible. I am the one the superintendent reports to. I'm responsible not only for the Air Force Academy, but for the conduct of the entire Air Force, along with Secretary Roche, in their conduct in war, and, as we have seen, our Air Force operates throughout the world over an extended period of time.

Mr. Chairman, I appreciate the opportunity to be here today, sir, and look forward to your questions.

Chairman WARNER. Thank you, General, and we expected no less from you to accept full accountability. Thank you.

General Counsel.

#### **STATEMENT OF HON. MARY L. WALKER, GENERAL COUNSEL, DEPARTMENT OF THE AIR FORCE**

Ms. WALKER. Thank you, Mr. Chairman, Senator Levin, members of the committee. Thank you for giving me this opportunity to discuss my role and that of the Working Group convened by the Secretary of the Air Force to review the policies, programs, and practices to deter and respond to sexual assaults at the Air Force Academy. I should note, for the time-frame reference, that I assumed my duties November 12, 2001.

My office and the Working Group that I chaired have worked diligently with Secretary Roche and General Jumper to review the Academy's policies and programs over the last 10 years and to capture the facts surrounding the sexual assaults at the Academy in

response to cadet complaints Secretary Roche received in January of this year.

My office interviewed the cadet who wrote the e-mail, and I personally met with her and another assault victim very early on. We were very concerned about the issues they raised. The Secretary was concerned as well, and thus, he demanded a focused, aggressive effort to determine the facts and to implement changes at the Academy.

The Working Group's report was not a staff report that was handed to the Secretary and the Chief. I worked very closely with the Secretary and General Jumper throughout the Working Group's process, as did other members of the Working Group. I met regularly with Secretary Roche, and had an ongoing informal dialogue with him about the issues being raised. As soon as the first staff team was dispatched to the Academy, he was provided feedback as I received it, and he and the Chief received a draft of the preliminary findings before they were made formally available to them, on March 19, as well as other various drafts of the final report of the Working Group, for their comments.

The Secretary and the Chief provided comments to us on the draft reports. The Working Group members also individually reviewed the draft report and made comments as well, and those comments were addressed in the final report.

During the course of the Working Group's review, the Secretary raised questions and provided comments. He was very concerned we report the facts, let the facts speak for themselves, and that we not speculate. We were very careful to document with original source documents each fact in the report.

During the course of the Working Group's report preparation, I asked that a historical section be included so that we could see how the policies and programs developed over time. This necessarily involved the Academy leadership and what they had done to address the issues over time. As this developed and we received more information, the staff team and I became concerned that if accountability of leadership was to be considered in this process, an inspector general was better suited than the Working Group to look at these matters. I was aware of the parallel efforts underway by the Air Force Inspector General and the Department of Defense Inspector General, looking at many of these issues.

I took this issue to the Secretary, and he agreed, reminding me of our charter to look at policies and programs in light of the cadet complaints, not at leadership accountability. He stated that he and General Jumper would be looking at leadership's role after all the reviews and reports had been completed.

It was the direct involvement by the Secretary and the Chief of Staff that enabled them to understand the depths of the challenge we faced, and also contributed to their ability to author the Agenda for Change. Our charter from Secretary Roche was to find the facts, no matter what the facts revealed. The Working Group did not engage in a protective mentality to shield Air Force leaders, past or present. That would have completely undermined our efforts to protect victims and to pursue the changes that were needed at the Academy.

Much has been made of facts the Working Group did not have. I was not aware of the facts developed by the Fowler Panel regarding the prior headquarters' involvement in Academy sexual assault issues in the 1996/1997 time frame referred to at page 5 of the Fowler Panel report. However, the Working Group was aware early on of the Office of Special Investigations (OSI) concern raised in late 1999 or early 2000, with the confidential reporting process at the Academy, and they were aware that the OSI commander viewed this as preventing OSI's receiving information on reports of assault sufficient for them to be investigated. I raised the same issue that had been raised in 2000, and that is when I learned of the prior question raised by OSI.

As I understand it, this concern was raised, and various functions at headquarters discussed the issue. These were some of the same offices that were participating in the Working Group this year.

The 2000 issue raised by OSI, was not that consideration was not being given to review of sexual assault issues and sexual harassment at the Academy, but, rather, it was an OSI complaint about the confidentiality reporting process. I am told the effort consisted of one, possibly two, meetings, acquisition of information, exchanges of views on the issue, and an exchange of e-mails, with long periods of inactivity; months where nothing happened.

When it became apparent these discussions could not resolve the issue, Mr. Atlee, who is currently my deputy, recommended that the OSI commander and the Academy superintendent meet and attempt to resolve the issue directly. The OSI commander subsequently did meet with the superintendent and the commandant, and afterwards reported they had reached an agreement that resolved his concerns, and the confidential process of reporting remained in effect.

The Working Group was aware of the issue raised by OSI in 2000. That is, they were aware, in 2003, that it had been raised in 2000. This issue is documented in the Working Group's report at pages 17, 20, 141, and all of the footnotes cited in those paragraphs dealing with that issue.

Had we been aware, however, of facts concerning the prior involvement of Air Force leadership in the sexual assault issues at the Academy in the 1996/1997 time frame, we would have included them in the report, as well. Based on what I now know about those issues, they only serve to underscore the Working Group's 43 findings; among them, findings that the Academy's programs, though well-intentioned, were not working, that there was a culture problem at the Academy, and that the confidential reporting process, though well-intentioned, had failed.

The facts are the facts, and I would have included any relevant facts essential to our review. It is inconsistent with my intent to paint a complete picture to suggest I would have withheld relevant facts. Those were relevant facts. Had I been asked, I would have made this clear to the Fowler Panel.

The Working Group provided Secretary Roche exactly what he asked for, a detailed report that delineated the nature and the scope of the problem at the Air Force Academy that the cadet victims complained of, with recommendations for change.

In addition to the 43 findings, we made 36 recommendations for change and identified 12 areas for further study. One of the areas for further study was the need to examine the extent to which Air Force headquarters had been and should be involved in the oversight of sexual assault and sexual harassment issues at the Academy.

I believe the report of the Working Group met its charter and provided invaluable information, which served as a foundation for the important changes that have been made for the good of the Academy and the cadets it prepares to become officers.

The military and civilian members of the Air Force who gave up nights and weekends with their families for months to complete the Working Group's effort are dedicated people, military and civilian, who care deeply about these issues. To their credit, Lieutenant General Rosa, Brigadier General Weida, are now implementing and executing the changes they recommended. These changes, brought about by the Secretary and the Chief in response to the information they received, work toward a safe environment for our cadets and one in which future officers, both men and women, can thrive.

I thank you for this opportunity to help clear up these facts, and I await your questions.

Thank you.

[The prepared statement of Ms. Walker and the Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy follow:]

PREPARED STATEMENT BY HON. MARY L. WALKER

Mr. Chairman, Senator Levin, members of the committee. Thank you for giving me this opportunity to discuss my role and that of the Working Group convened by the Secretary of the Air Force to review the policies, programs, and practices to deter and respond to sexual assaults at the Air Force Academy.

I assumed my duties as Air Force General Counsel on November 12, 2001.

My office, and the Working Group I chaired, have worked diligently with Secretary Roche and General Jumper to review the Academy's policies and programs over the last 10 years and to capture the facts surrounding the sexual assaults at the Academy in response to the cadet complaints Secretary Roche received in January 2003.

My office interviewed the cadet who wrote the e-mail and I personally met with her and another assault victim. We were very concerned about the issues raised. The Secretary was as well and thus he demanded a focused, aggressive effort to determine the facts and to implement changes.

The Working Group's report was not a "staff report" that was "handed to" the Secretary and the Chief. I worked very closely with Secretary Roche and General Jumper throughout the Working Group's process as did other members of the Working Group.

I met regularly with Secretary Roche and had an ongoing informal dialog with him. As soon as the first staff team was dispatched to the Academy, he was provided feedback as I received it, and he and the Chief received a draft of the preliminary findings before they were formally provided to them on March 19, as well as various drafts of the final report of the Working Group for their comments.

The Secretary and the Chief provided comments to us on the draft reports. The Working Group members also individually reviewed the draft report and made comments.

During the course of the Working Group's review, the Secretary raised questions and provided comments. He was very concerned we report facts and let them speak for themselves and that we not speculate. We were careful to document with original source documents each fact in the report.

During the course of the Working Group's report preparation, I asked that a historical section be included so that we could see how the policies and programs developed over time. This necessarily involved the Academy leadership and what they had done to address the issues over time.

As this developed, and we received information, the staff team and I became concerned that if accountability of leadership was to be considered, an Inspector General was better suited than the Working Group to look into these matters. I was aware of the parallel efforts underway by the Air Force and DOD Inspectors General.

I took this issue to the Secretary and he agreed, reminding me of our charter to look at policies and programs in light of the cadet complaints not leadership accountability. He stated that he and General Jumper would be looking at leadership's role after all the reviews were completed.

It was the direct involvement by the Secretary and the Chief that enabled them to understand the depths of the challenge we faced and also contributed to their ability to author the Agenda for Change.

Our charter from Secretary Roche was to find the facts—no matter what the facts revealed. The Working Group did not engage in a "protective mentality" to shield Air Force leaders (past or present). That would have completely undermined our efforts to protect victims and pursue the changes that were needed at the Academy.

Much has been made of facts the Working Group did not have. I was not aware of the facts developed by the Fowler panel regarding the Headquarters' involvement in the Academy sexual assault issues in the 1996–1997 timeframe, referred to at page 5 of the Fowler panel report.

However, the Working Group was aware early on of the OSI concern raised in late 1999, early 2000 with the confidential reporting process at the Academy that the OSI commander viewed as preventing OSI's receiving information on reports of assaults sufficient for investigation. I raised the same issue and that is when I learned of the prior review.

As I understand it, this concern was raised and various functions at Headquarters discussed the issue. These were some of the same offices that were on the Working Group in 2003.

The 2000 issue consideration was not a review of sexual assault issues and sexual harassment at the Academy, but rather an OSI complaint about the confidentiality reporting process. I am told the effort consisted of one (possibly two) meetings, acquisition of information, exchanges of views on the issue, and an exchange of e-mails with long periods of inactivity. When it became apparent these discussions would not resolve the issue, Mr. Atlee recommended that the OSI commander and the Academy Superintendent meet and attempt to resolve the issue directly. The OSI commander subsequently met with the Superintendent and Commandant and afterwards reported they had reached an agreement that resolved his concerns.

The Working Group was aware of the issue raised by OSI in 2000, and the issue is documented in the Working Group's report (at pages 17, 20, and 141, and footnotes at each page).

Had we been aware of the facts concerning the prior involvement of Air Force leadership in the sexual assault issues at the Academy in the 1996–1997 timeframe, we would have included them in the report.

Based on what I now know about those issues, they only serve to underscore the Working Group's 43 findings—among them findings that the Academy's programs, though well intentioned, were not working, that there was a culture problem, and that the confidential reporting process had failed. The facts are the facts and I would have included any relevant facts essential to our review.

It is inconsistent with my intent to paint a complete picture to suggest I would withhold relevant facts—and those would have been relevant facts. Had I been asked I would have made this clear to the Fowler panel.

The Working Group provided Secretary Roche exactly what he asked us for—a detailed report that delineated the nature and scope of the problem at the Air Force Academy the cadet victims complained of with recommendations for change. In addition to the 43 findings, we made 36 recommendations for change, and identified 12 areas for further study. One of the areas for further study identified was the need to examine the extent to which Air Force headquarters has been and should be involved in the oversight of sexual assault and sexual harassment issues.

I believe the report of the Working Group met its charter and provided invaluable information that served as a foundation for the important changes that have been made for the good of the Academy and the cadets it prepares to become officers.

The military and civilian members of the Air Force who gave up nights and weekends with their families for months to complete the Working Group report are dedicated people who cared deeply about the issues.

To their credit, Lieutenant General Rosa and Brigadier General Weida are now implementing and executing the changes recommended. These changes work toward a safe environment for our cadets and one in which future officers—both men and women—can thrive.

I thank you for this opportunity to address the committee and look forward to answering your questions.



## DEPARTMENT OF THE AIR FORCE

WASHINGTON D.C. 20330-1000

OFFICE OF THE GENERAL COUNSEL

June 17, 2003

MEMORANDUM FOR THE SECRETARY AND THE CHIEF OF STAFF OF THE AIR FORCE

FROM: The General Counsel of the Air Force

SUBJECT: Transmittal of Air Force Academy Working Group Report

I hereby transmit to you The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy. This Report is the result of a collaborative effort at the highest levels of Air Force leadership and responds to your request for a review of the policies, programs and practices of the Air Force Academy to deter and respond to incidents of sexual assault. In the course of conducting its investigation, the Working Group reviewed thousands of pages of information and conducted hundreds of interviews, including those with present and former cadets, Academy faculty, Air Force leadership, and the local community. After considering Academy policies, programs and responses to reported sexual assaults during the ten-year period from January 1993 to December 2002, the Report makes specific findings, conclusions and recommendations, many of which have been addressed by your *Agenda for Change*, dated March 26, 2003.

Although the Report attempts to provide a comprehensive review of Academy processes related to sexual assault, there were limitations on the Working Group's effort. Specifically, consistent with your direction, cadet allegations of sexual assault and complaints regarding the handling of specific cases were referred directly to the Air Force Inspector General and that review is ongoing as of the date of the Report. In addition, the Department of Defense Inspector General and an independent panel recently named by the Secretary of Defense are conducting reviews of sexual assault matters at the Academy. The results of these efforts may provide you with additional information regarding the Academy for your consideration.

In closing, I would like to communicate to you on behalf of the Working Group that it has been an honor to serve you and the Department of the Air Force in conducting this important review. The Air Force Academy is one of our finest military institutions and has trained generations of leaders to serve our great Nation, including many outstanding women leaders in today's Air Force. It is my sincere desire that this Report will prove useful in your ongoing efforts to maintain the highest standards and values among the men and women of the United States Air Force.

A handwritten signature in cursive script, reading "Mary Walker".

Hon. Mary L. Walker  
General Counsel



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**The Report of the Working Group  
Concerning the  
Deterrence of and Response to  
Incidents of Sexual Assault  
at the  
U. S. Air Force Academy**

**June 2003**

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**HEADQUARTERS, UNITED STATES AIR FORCE**

## Executive Summary

### *Introduction*

On January 2, 2003, Dr. James G. Roche, the Secretary of the Air Force, received an e-mail directed initially to female cadets, which asserted that there was a significant sexual assault problem at the United States Air Force Academy that had been ignored by the Academy's leadership. Upon receipt of the e-mail, Secretary Roche immediately directed the General Counsel of the Air Force to lead a high-level working group to review cadet complaints, and the policies, programs and practices of the Academy to deter and respond to incidents of sexual assault, with a view toward making recommendations as appropriate. Secretary Roche also tasked the Working Group to review cases of sexual assault that had been reported from January 1993 to December 2002. In conducting this review, the Working Group was to keep in mind both "the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes."

The Secretary subsequently directed that the Air Force Inspector General review individual cases and cadet complaints concerning the handling of any cases. That review is still pending.

The Working Group<sup>1</sup> received briefings, reviewed pertinent information, identified additional documents and information needed and dispatched a staff team to the Academy to gather facts and interview those with knowledge of the program's history and its practices over time. The Working Group also consulted various experts in the Air Force including those in the areas of victim psychology, sexual assault and statistics.

Cadet victims were interviewed, including at least one associated with the January 2, 2003 e-mail. In order to allow for contact from cadet victims, the Working Group established telephone numbers and an e-mail address for present and former cadets to provide comments. To allow the reporting of previously unreported allegations, a separate telephone number was provided for victims to reach the Air Force Inspector General's office directly. Points of contact, including a toll-free number, were provided to Congressional and other offices that had indicated to the Working Group they were in contact with victims.

In addition to examining the Academy's current processes to deter and respond to sexual assaults, the Working Group considered the evolution of the Academy's program and attempted to identify underlying factors that contribute to or provide opportunities for incidents of sexual assault to occur.

An interim report of the Working Group's findings was provided to the Secretary and Chief of Staff in March 2003, and based in part on that report, the Secretary and Chief of Staff announced

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<sup>1</sup> The Working Group consists of the following individuals by title: The General Counsel (chair), the Assistant Secretary for Manpower and Reserve Affairs, the Inspector General, the Surgeon General, the Director of Air Force Communications, the Director of Legislative Liaison, the Deputy Chief of Staff for Personnel, the Deputy Assistant Secretary of Equal Opportunity, the Judge Advocate General, the Commander of the AFOSI, the Director of Security Forces, the Deputy Director of Public Affairs, and the Air Force Academy Liaison.

their *Agenda for Change* for the Academy on March 26, 2003. It made changes in cadet and Academy life consistent with the Air Force concepts of no tolerance for sexual assault, training tomorrow's officers to be people of character, and assuring that leadership at all levels would be involved in overseeing and encouraging behavior consistent with the Air Force Core Values of "Integrity First, Service Before Self, and Excellence in All We Do." Since the Working Group's Report describes the system prior to the *Agenda for Change*, the Report identifies those aspects of the existing system that have been or will be affected by the *Agenda for Change*. It is expected that additional measures will be implemented in response to the findings and recommendations in this Report.

In addition to making findings and recommendations, the Working Group identified several issues that it believes should be considered for further study. These were beyond the scope of the Working Group's charter, or beyond the time available in which to examine them, but are worthy of consideration in dealing with the issues as a whole.

Significantly, the Working Group found no systemic acceptance of sexual assault at the Academy, no institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to avoid incidents of sexual assault and to support victims. However, the Working Group also found that the focus on issues of sexual assault had varied over time and lessened in recent years, and a number of cultural and process matters are problematic. They are discussed below, following a brief description of salient characteristics of the Academy.

### *The Air Force Academy*

Established in 1954, the Academy prepares cadets for careers as officers in the United States Air Force. The total enrollment of the Academy is approximately 4,000 students. The freshman class comprises approximately 1,200 students each year. Women were first admitted in 1976 and now comprise about sixteen percent of the students.

The Superintendent is the commanding officer of the Academy and is responsible for the Athletic Department, the 10<sup>th</sup> Air Base Wing (which provides support services), and the Dean of Faculty who supervises the Cadet Counseling Center (including Sexual Assault Services). The Commandant of Cadets, who reports to the Superintendent, commands the Training Wing (which includes the Cadet Wing), and supervises the personnel and activities assigned in direct support and administration of the Cadet Wing. Among other things, the Commandant administers the character development programs, professional development programs, and by Academy regulation, though not by historic or recent practice, chairs the Sexual Assault Services Committee at the Academy.

The Cadet Wing is composed of four Cadet Groups, each of which is comprised of nine squadrons of approximately 110 cadets. The Cadet Groups fall under the oversight of the Training Group Commander, an Air Force colonel subordinate to the Commandant. Each squadron is assigned one Air Officer Commanding, an active duty officer, who is responsible for the welfare and professional development of each cadet in the squadron and serves as a role model for the cadets. A rank structure exists among cadets based on class year.<sup>2</sup>

<sup>2</sup> This system is sometimes called the fourth-class (or four-degree) system. Freshman cadets are officially "Fourth-Class cadets." Seniors are "First-Class cadets." Following this, sophomores are "Third-Class cadets" and juniors are "Second-Class cadets."

The arrival of women at the Academy required adjustments to the physical accommodations and a psychological shift away from a formerly all male environment. In some ways the acceptance of women has not been complete, as evidenced by harassment of some female cadets by some male cadets that began with the first women and has persisted at some level to the present day. In other ways, women have been very well accepted, meeting fully the expectations for their success as cadets and future officers.

### *Scope of the Issue*

Due to a unique definition of sexual assault and unique procedures in use at the Academy, it is difficult to establish the extent of the sexual assault issue at the Academy. Applying the Academy's expansive definition of sexual assault (and recognizing that sexual assaults are underreported), over the last ten years there have been an average of about fourteen allegations of sexual assault per year (which may include non-criminal conduct and/or non-cadet assailants or victims) involving about 5% of female cadets and less than 1% of male cadets. During the same ten-year period (and included within the fourteen allegations per year) there were an average of about six investigated allegations of sexual assault per year (including an average of two to three rape allegations per year). Three of the total rape allegations were recanted. Analysis of investigated allegations indicates that approximately half of such allegations did not result in evidence sufficient to initiate action under the Uniform Code of Military Justice (UCMJ).

### *The Academy's Program to Deter and Respond to Incidents of Sexual Assault*

The Academy has, since 1993, created and expanded an extensive program to deter and respond to incidents of sexual assault. The program provides training for cadets and other personnel at the Academy intended to prevent sexual assault and to ensure support to victims. It has incorporated dedicated services of victim advocates as part of a Cadet Counseling Center, a Hotline for reporting sexual assault, and cadet volunteers to train fellow cadets (and others) in sexual assault avoidance and response, and to advise victims. Training has included various formal sessions for cadets starting in Basic Cadet Training, squadron training by the cadet volunteers, and a Sexual Assault Awareness Month schedule of activities. By design, the process has been largely victim-controlled and has included the ability to report sexual assaults confidentially. Victim support has included counseling support, legal and investigative support, a victim mutual support group, medical support (including rape protocol arrangements with a local hospital to provide forensic experts who maintain a high level of expertise). The Academy has also carried out a character development program intended, in part, to address gender climate issues.

### *Concerns with the Academy-Unique Process*

Under the Academy's program, virtually all initial reports of sexual assault at the Academy are made to the Cadet Counseling Center or its Hotline and only the information the victim is willing to relate is provided to command. In many instances, the reports to the Cadet Counseling Center and the Hotline have included limited information regarding the assault with no identification of the victim or assailant. By design, the decision whether to pursue an investigation has been largely left to the victim. Command has been provided information and has had the ability to override the wishes of a cadet when the victim's identity has been known within the confidential process and enough information has been provided to warrant such a decision. However, the quality of the information provided to command has been dependent upon those collecting the

information within the confidential process and the individual providing it. Consequently, there may be very little information to act upon to deal with assailants, and delays in cadet decisions to provide information can significantly impair the ability to obtain the evidence necessary to a successful prosecution. This has the result of impairing the Academy leadership's ability to assure justice and to prevent commissioning of cadets who are not fit for military service. Further, the Academy-unique process suggests to cadets that command cannot be trusted to respond appropriately, a concept antithetical to military principles and the training of future military leaders.

The ordinary Air Force process of reporting and handling crimes of sexual assault are quite different. The Air Force-wide system does not provide a confidential forum to report incidents of sexual assault. Instead, victims usually report to their chain of command, to the Air Force Office of Special Investigations (AFOSI, the principal Air Force criminal investigative agency), or to medical personnel. These reports of sexual assault trigger investigative and disciplinary processes, and victim support mechanisms.

### *Unrealizable and Frustrated Expectations*

The Academy-unique definition of sexual assault misstates aspects of the law and can raise unrealistic expectations for prosecution in the minds of victims. By using an expansive definition not linked to specific crimes, with misinformation regarding alcohol impairment on the issue of consent, and a general lack of information regarding consent issues, cadets can be misled regarding the ability of command to respond to their reports. Further, the use of cadets and other non-legal personnel to discuss allegations with victims has the inherent potential for communication of incorrect or incomplete information leading to misperceptions. This has been compounded by difficult fact situations in many of the cases, often involving acquaintances or friends and the use of alcohol. A significant number of cases have involved some consensual sexual activity prior to the alleged assault. For these reasons, and others, whether the victim has consented, or whether the alleged assailant has reasonably believed that to be the case, has often been at issue.

We note that the unique definition of sexual assault has also compounded the difficulty of quantifying criminally cognizable allegations of sexual assault at the Academy, as most reports have been made in the context of the Academy's definition and confidential process without sufficient facts to allow further analysis.

Another aspect of the Academy process that has apparently frustrated victim expectations is a discretionary "amnesty" provision, which provides that cadet victims will "generally not be disciplined" for violations of cadet instructions that may have occurred in connection with an assault (such as alcohol use or unprofessional relationships). The purpose of the amnesty policy is to provide an avenue for victims to come forward to obtain help without fear of discipline for infractions that occurred in connection with the assault. However, the Working Group determined that the amnesty process has not been clearly understood either by cadets or Academy leadership, reducing its effectiveness and creating a sense of unfairness.

### *Lack of Feedback to Victims and Others*

The Working Group found that there has been a lack of feedback about sexual assault cases to cadets and other people at the Academy that has left them largely uninformed about current sexual assault cases. The lack of feedback to alleged sexual assault victims about discipline of offenders may cause some victims to lack trust and confidence in command and in the Academy's

process to respond to allegations of assault. The lack of information has been driven by Privacy Act concerns and certain existing regulations that may be narrower than the law would allow.

### ***Lack of Coordination of Activities and Information***

In the Air Force, the Victim and Witness Assistance Program is the means for achieving an interdisciplinary approach to the delivery of services to victims. At the Academy, the primary avenue for coordinating an interdisciplinary approach to sexual assault for cadets has, since 1995, been the Sexual Assault Services Committee. However, neither of the two programs has been functioning as intended at the Academy, nor has either of them effectively engaged all of the entities necessary for full coordination of services to victims. By 2002, the Sexual Assault Services Committee met infrequently with limited participation by its members and had become more of a pro forma activity compared to earlier practices. It was not effectively engaging all the components responsible for deterrence of and response to sexual assault. Similarly, Victim and Witness Assistance Program responsibilities were not being fulfilled through the designated legal office, nor were all the parties responsible for the sexual assault program represented in the overarching program. Consequently, effective coordination of victim requirements across all responsible entities, and advice to victims regarding some of their entitlements, was missing, including consistent advice on the investigative and legal processes.

Academy programs related to sexual assault and sexual harassment have been conducted under different mission areas (the Dean of Faculty, the Commandant and 10<sup>th</sup> Air Base Wing) and have not been effectively integrated. Part of this has been due to the deliberate separation of the Cadet Counseling Center from the Commandant's organization as part of the confidential reporting process, but the net effect has been diminished coordination on closely related issues. A poor working relationship among the Academy mission elements led to a decline in communication. Coordination among the various components of the Academy, necessary to effectively respond to allegations of sexual assault thus suffered.

Although the Academy has been collecting information on sexual assault in some form or another since before 1993 and has been conducting surveys related to gender climate and other related matters, the usefulness of the results and the adequacy of the surveys were considered questionable and the results were not consistently provided to command. Although the Academy recently initiated measures to improve the survey instruments to assess sexual assault and related matters, at present there are no adequate means of reliably measuring sexual assault or gender climate issues over time; nor are the means in place to reliably compare Academy sexual assault data with other academies, civilian schools, or institutions.

### ***Command Involvement***

During the ten-year time period reviewed by the Working Group, Academy leadership had varying degrees of involvement in sexual assault issues, ranging from direct focus on assault processes and cases to indirect focus on issues of character and leadership. Beginning with the development of the Academy's program in 1993, Academy Superintendents have been proactively involved in sexual assault issues, however this direct focus by the Superintendents on sexual assault issues appeared to gradually lessen after 1997, as did that of Commandants, due in part to competing demands. This reduction in focus combined with friction among the Academy's various mission elements, misunderstanding of roles, a discipline environment that was responding to standards of conduct issues and perceived to be harsh, and diminishing activity by the committee

responsible for oversight of sexual assault issues, produced an environment less attentive to victim concerns and factors in Academy life affecting sexual assaults, and which was less capable of a coordinated response to individual cases than in earlier years.

A review of investigated allegations by members of the Working Group's staff team experienced in military justice indicated that the Academy's disposition of cases over the last ten years has generally been within reasonable boundaries of discretion, but also suggests that the Academy community might benefit from greater consideration of the use of formal criminal processes in close cases.

#### *Additional Matters Related to Sexual Assault*

While there were extensive programs in effect to educate cadets and faculty about sexual assault avoidance and response, there were also a number of factors in existence that detracted from the message. Sexual assault training did little to emphasize good character as a key aspect of deterrence, and the timing of some training, which took place when cadets were overwhelmed, may have been problematic.

Significantly, there exists a tendency for cadets to place loyalty to peers above loyalty to values, which contributed to a tolerance of behaviors that can lead to sexual assault (such as underage drinking) and in some instances to a failure to report sexual assault.

Fear of discipline and its effects on cadets' careers, peer ridicule, ostracism and reprisal, loss of privacy and loss of reputation are factors bearing on cadets' reluctance to report sexual assault.

In addition, the cadet authority structure, beginning in Basic Cadet Training (which takes place in the summer before the freshman year), establishes a disparity of power among cadets that can make subordinate cadets (particularly Fourth-Class cadets, or freshmen), more vulnerable to upperclass cadets who might abuse their authority. This was underscored by the fact that 53% of the investigated cadet-on-cadet allegations we examined involved Fourth-Class cadet victims, while Fourth-Class cadets represent only 29% of the cadet population.

Perceptions have existed among some cadets that criminal investigators are unfriendly to victims, a perception that may have been inadvertently contributed to by the Cadet Counseling Center personnel and cadet volunteers. This perception may have led some victims to avoid the investigative process.

We found indicators that a climate among cadets of inappropriate, gender-based comments about women, off-color jokes and some other forms of sexual harassment persists at the Academy. Neither the actual extent and severity of the problem, nor its connection to sexual assault, is reliably known. Improved gender climate/sexual harassment surveys are needed at the Academy to reliably assess the nature and extent of these behaviors.

Understanding that sexual assault in the Academy environment represents a failure of character and often of cadet leadership responsibilities, we noted that the Academy does not include leadership classes as a mandatory academic area, nor is attendance at the Academy's Center for Character Development programs a requirement for graduation or commissioning. Further, while a study of methods for measuring character development has begun at the Academy, there is currently no process to reliably measure character development.

Our review found that 55% of the cadet-on-cadet investigated allegations involved incidents in the dormitories. We also observed that women's dormitory rooms have been intermingled with men's rooms in their squadron dormitory areas, although this is not consistent with Air Force housing regulations or practice. Further, women's bathrooms have been at a distance from many of the women's rooms causing them to have to travel the halls for some distance in robes or athletic attire. We also found that until January 2003, officer and noncommissioned officer presence in the dormitories at night was not extensive. Since that time, however, arrangements have been made to provide significant officer and noncommissioned officer presence throughout nighttime hours.

The Working Group found that alcohol use was a significant factor in the incidence of sexual assault and was present in 40% of the cadet-on-cadet investigated allegations.

We found that there are few female role models for cadets in the Training Group and there is also a lack of emphasis on female support and mentoring that could provide resources to female cadets, especially the Fourth-Class female cadets who may need it most.

### ***Conclusion***

The Working Group found no systemic acceptance of sexual assault at the Academy, institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to encourage reporting, avoid incidents of sexual assault and support victims. However, the Working Group also found the focus on sexual assault issues had varied over time and lessened in recent years, and a number of culture and process matters are problematic. Collectively, they produced a less than optimal environment to deter and respond to sexual assault or bring assailants to justice. They demonstrate work that needs to be done to ensure that victim support and institutional values are consistently addressed.

### ***Recommendations***

The Working Group has made a series of recommendations in the Report. Some are listed briefly below. The Secretary and Chief of Staff of the Air Force have already addressed many in the *Agenda for Change*, in whole or in part, and those are noted with an asterisk.

- Conform Academy definitions, policy and processes to Air Force definitions, policy and processes with sexual assaults immediately reported to command. \*
- Effectively integrate all Academy agencies charged with responding to sexual assault, beginning at the time of report, (including a "First Responder Team") using the Air Force Victim and Witness Assistance Program as the overarching process. \*
- Provide extensive training in sexual assault matters, including victim psychology, psychological profiles of offenders, predatory behaviors, victim support and advocacy to responders.

- Involve the command structure directly and closely in victim support and protect the privacy of victims. Preserve positive aspects of the Academy's program consistent with the *Agenda for Change* and the law. \*
- In all reported cases of sexual assault, provide assured amnesty to victims and others consistent with the concepts in the *Agenda for Change*. \*
- Increase the frequency and effectiveness of sexual assault deterrence training, emphasizing small groups, cadet participation, and a focus on character, including the ethical use of power. \*
- Reevaluate the *Agenda for Change* decision to use Academy medical resources to provide rape protocols. While keeping Academy medical personnel involved in patient care, integrate them with the specialized rape protocol services at Memorial Hospital.
- Provide feedback to victims of sexual assault and Academy personnel on case dispositions to the maximum extent allowed by law. \*
- Evaluate current standards regarding the use of alcohol. Take appropriate action to deter alcohol violations, particularly regarding misuse of alcohol and underage drinking. \*
- Aggressively employ all means available to eliminate sexual harassment and gender bias. \*
- Reinforce, repeatedly, the importance of loyalty to values over loyalty to peers. \*
- Engage cadet leadership in planning and executing measures to build and institutionalize loyalty to values above peers, and to assure victim support free of fear of peer reprisal.
- Reevaluate the cadet rank structure and the fourth-class system to reduce the potential for abuse of subordinate cadets. \*
- Establish formal support structures for Fourth-Class cadets including mentoring opportunities. \*
- Make leadership classes part of the mandatory academic curriculum of the Academy, and make successful participation in character development programs graduation and commissioning requirements. Establish effective mechanisms to assess the progress of character development. \*
- Adjust dormitory room assignments to enhance mutual support of female members, particularly Fourth-Class female cadets (freshmen), while preserving squadron integrity. \*
- Ensure continued nighttime officer and noncommissioned officer leadership, oversight and supervision in the dormitories. \*
- Implement highly selective assignment processes for Air Officers Commanding and enhance training for them to provide the best leadership and role models for cadets. Reinstate the Masters program for AOCs. \*

- Consider appropriate measures to provide increased opportunities for role modeling of successful female officers for the benefit of male and female cadets. \*
- Establish effective mechanisms by which Academy and Air Force leadership can measure and monitor sexual assault and related gender climate trends and validly compare them to relevant organizations. Provide statistics to the Secretary of the Air Force and the Chief of Staff annually.
- Make use of standard Air Force Unit Climate Assessment tools within the Academy's Training Wing, including cadets, to provide comparative data and insights to command.

Other recommendations, including areas recommended for further study, can be found in the Report.

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## **I. Introduction**

### ***A. The Secretary's Charter***

On January 2, 2003, Dr. James G. Roche, the Secretary of the Air Force, received an e-mail directed initially to female cadets and asserting that there was a significant sexual assault problem at the United States Air Force Academy<sup>3</sup> that had been ignored by the Academy's leadership.<sup>4</sup> Upon receipt of the e-mail, Secretary Roche immediately directed Mary L. Walker, the General Counsel of the Air Force, to "establish a high-level working group<sup>5</sup> to review cadet complaints concerning the Academy's program of deterrence and response to sexual assaults."<sup>6</sup>

Secretary Roche tasked the Working Group to review cadet complaints and cases of sexual assault that had been reported from January 1993 to December 2002 and to evaluate whether the Academy's policies, programs and practices "to deter or respond to sexual assault [have]... functioned appropriately" and provide recommendations for change.<sup>7</sup> In doing so, the Working Group was to keep in mind both "the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes."<sup>8</sup>

### ***B. The Working Group's Investigation***

The Working Group received briefings, reviewed pertinent information, and dispatched a staff team to the Academy to gather facts and interview those with knowledge of the program's history and its practices.<sup>9</sup> The Working Group also consulted with various experts in the Air Force including those in the areas of victim psychology, sexual assault and statistics.

The Working Group attempted to contact cadet victims<sup>10</sup>, including the cadets who had written the January 2, 2003 e-mail.<sup>11</sup> To allow for contact from cadet victims, the Working Group

<sup>3</sup> Throughout this Report the United States Air Force Academy is referred to as the Academy. In some attachments, the Academy is also referred to as USAFA, and the AFA.

<sup>4</sup> E-mail from Renee Trindle to Dr. James G. Roche, Secretary of the Air Force, Exhibit 1. "Renee Trindle" is a pseudonym. In addition to Dr. Roche, the e-mail was sent to General John Jumper, Chief of Staff of the Air Force, Sen. Wayne Allard, Sen. Ben Campbell, other US Congressmen, and two media representatives. The e-mail was also sent out earlier to numerous others under the pseudonym "John Smith." E-Mail from John Smith, December 13, 2002, Exhibit 2. The author also provided advice to female cadets at the Air Force Academy on how to deal with the issues of sexual assault.

<sup>5</sup> The Working Group consisted of the General Counsel (chair), the Assistant Secretary for Manpower and Reserve Affairs, the Inspector General, the Surgeon General, the Director of Air Force Communications, the Director of Legislative Liaison, the Deputy Chief of Staff for Personnel, the Deputy Assistant Secretary for Equal Opportunity, the Judge Advocate General, the Commander of the AFOSI, the Director of Security Forces, the Deputy Director of Public Affairs, and the Air Force Academy Liaison.

<sup>6</sup> SECAF Guidance for the General Counsel and Working Group, Exhibit 3. See this Report, Section III.B., The Academy's Definition of Sexual Assault, for discussion of the Academy's definition of sexual assault.

<sup>7</sup> SECAF Guidance for the General Counsel and Working Group, Exhibit 3.

<sup>8</sup> *Id.*

<sup>9</sup> Unless otherwise noted, this Report reflects conditions at the Academy as of March 25, 2003, *United States Air Force Academy: Agenda for Change*, March 26, 2003, Exhibit 4.

<sup>10</sup> Throughout the report, the terms "victim" and "alleged victim" are used. No legal significance should be attached to the use of either term. Nothing in this report can be taken as an adjudication of either victimization or culpability.

established phone numbers and an e-mail address for present and former cadets to report previously unreported allegations.<sup>12</sup> A separate telephone number was provided for victims to reach the Air Force Inspector General's office directly. Points of contact, including a toll-free number, were provided to Congressional and other offices that indicated they were in contact with victims so they could reach the Working Group. In addition to cadet complaints provided directly to the Working Group, complaints surfaced in a variety of media. Some cadets contacted their Congressional representatives (including at least one who apparently participated in drafting the e-mail and was interviewed by the Working Group). Some appeared on nationally televised news programs and others spoke with the print media.

The Working Group recommended that complaints pertaining to specific allegations of sexual assault should be referred to the Air Force Inspector General to ensure complaints were fully reviewed and cases were evaluated. The Secretary directed this be done. As the Inspector General's investigations regarding specific cases were conducted concurrent with the Working Group's examination (and in some cases are ongoing as of this Report), the Working Group focused on processes. The results of the Inspector General's efforts, and those of others reviewing the issues, may provide additional information.

On March 19, 2003, the General Counsel sent the Secretary and Chief of Staff a memorandum with preliminary findings.<sup>13</sup> Based in part on this interim report, the Secretary and the Chief of Staff announced the *Agenda for Change* at the Academy.<sup>14</sup> This document directs a number of changes at the Academy. As certain aspects of the *Agenda for Change* were implemented prior to the completion of this Report, we have noted areas that have been, or will be, affected by the *Agenda for Change*. It is expected that further study as well as further action will be achieved by the new Academy leadership in response to this Report.

The Report first discusses relevant Academy history and background information, then analyzes the Academy's program to deter and respond to sexual assault in light of the cadet complaints. This analysis is followed by a discussion of several factors related to deterrence of and response to sexual assault at the Academy. The Report then comments on a variety of other issues of relevance. The final area of discussion pertains to Academy leadership issues. The Report ends with findings and conclusions, recommendations and areas recommended for further study.

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<sup>11</sup> Also known as the "John Smith" e-mail. Members of the General Counsel's office responded to the e-mail seeking further information and, although the names and e-mail address were fictitious, were successful in making contact with, and interviewing, at least one alleged cadet victim who participated in its creation.

<sup>12</sup> While at the Academy, the staff team of the Working Group also established a number for cadets to call to arrange interviews with members of the staff team. During the course of its investigation, over 230 individual interviews (including interviews of victims, and with current and former cadets) were conducted, as well as focus group interviews (as opposed to individual interviews) with over seventy other cadets.

<sup>13</sup> Memorandum from the General Counsel to the Secretary of the Air Force and the Chief of Staff, Re: the General Counsel's Working Group's Preliminary Findings, March 19, 2003, Exhibit 5.

<sup>14</sup> *Agenda for Change*, Exhibit 4.

## **II. Academy History, Mission and Structure**

### ***A. Academy Mission and Organizational Structure***

Established in 1954, the Academy prepares cadets for careers as Air Force officers. The Academy is located against the eastern slope of the Rocky Mountains, eight miles north of Colorado Springs, Colorado and fifty-five miles south of Denver, Colorado.<sup>15</sup> The mission of the United States Air Force Academy is "to develop and inspire air and space leaders with vision for tomorrow."<sup>16</sup>

The President appoints cadets to the Academy.<sup>17</sup> Appointments are controlled by geographic, political and military end-strength limitations.<sup>18</sup> The total enrollment is approximately 4,000. About 1,200 Fourth-Class cadets (freshmen) are drawn from an application pool of approximately 9,000.<sup>19</sup> To be selected for admission, applicants must exhibit proven excellence in academics, leadership and athletics. Students come from all fifty states and from several foreign countries.<sup>20</sup> Women were first admitted in 1976<sup>21</sup> and currently comprise approximately sixteen percent of the cadet population.<sup>22</sup>

At present there are more than 500 military and civilian instructors and several visiting professors from around the nation teaching at the Academy. Exchange officers from the other U.S. services, and several foreign countries, are also part of the faculty. Each member of the faculty holds a masters degree and about fifty percent of the faculty hold doctorate degrees.<sup>23</sup>

### ***B. Leadership Structure***

The Secretary of the Air Force prescribes the Academy's organization,<sup>24</sup> however, 10 U.S.C. § 9331b, requires the following six positions:

1. Superintendent
2. Dean of the Faculty
3. Commandant of Cadets
4. Twenty-one Permanent Professors

<sup>15</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, profile page (2002-2003 ed.), Exhibit 6.

<sup>16</sup> United States Air Force Academy Instruction 36-173, Organization of the USAF Academy Program for Air Force Cadets, ¶ 1 (August 11, 1997) [hereinafter USAFA Instruction 36-173].

<sup>17</sup> 10 U.S.C. § 9341a.

<sup>18</sup> 10 U.S.C. § 9342. The law requires potential students be nominated to attend the Academy and establishes different nomination categories. For example, the President, Vice President, Senators and Congressional Representatives all nominate cadets for appointment to the Academy. Selection categories also include a specific number of appointments from other groups like children of deceased or disabled veterans, children of members of the reserve and active duty forces, enlisted members, cadets from AFROTC detachments or junior AFROTC, and international students. *Id.*

<sup>19</sup> Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 5.

<sup>20</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, at 4 (2002-2003 ed.), Exhibit 6.

<sup>21</sup> See this Report, Section II.F., Women at the Academy.

<sup>22</sup> E-mail, Re: Data, Percentage of Female Cadets, Exhibit 386.

<sup>23</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, profile page (2002-2003 ed.), Exhibit 6.

<sup>24</sup> 10 U.S.C. § 9331a.

5. Chaplain

6. Director of Admissions

The Superintendent reports to the Chief of Staff of the Air Force and is the commanding officer of the Academy and of its military post.<sup>25</sup> His duties include administering the cadet personnel system, and through the Command Staff Judge Advocate, providing legal oversight for cadet disenrollment procedures.<sup>26</sup>

The Commandant of Cadets commands the 34<sup>th</sup> Training Wing, which includes the Cadet Wing and the personnel and activities assigned in direct support and administration of the Cadet Wing.<sup>27</sup> The Commandant reports directly to the Superintendent and administers the military art and science curriculum, the professional development program, the airmanship and aviation programs, the character development programs, and the resource management programs.<sup>28</sup>

Permanent professors are Air Force officers who generally are highly qualified in one or more disciplines. Permanent professors normally have earned a doctorate or professional degree in an academic field and have demonstrated competence in their scholarly pursuits.<sup>29</sup>

### *C. Cadet Wing Structure*

The Cadet Wing is composed of all the cadets at the Academy and is led by the Cadet Wing Commander, a cadet in his or her fourth year at the Academy. The Cadet Wing is divided into four Cadet Groups, each of which is comprised of nine squadrons of approximately 110 cadets.<sup>30</sup>

The Commander of the 34<sup>th</sup> Training Group, a colonel who reports to the Commandant, oversees all four cadet groups and is responsible for cadet discipline and policy.

One active duty officer is assigned to each Cadet Squadron and Group as an Air Officer Commanding (AOC), for a total of thirty-six Squadron AOCs and four Group AOCs. Each AOC is responsible for the welfare and professional development of his or her cadet subordinates. A noncommissioned officer (NCO), who serves as a Military Training Leader (MTL), assists each squadron AOC.

<sup>25</sup> 10 U.S.C. § 9334.

<sup>26</sup> USAFA Instruction 36-173, ¶ 3.1. In addition, the Superintendent serves as a general court-martial convening authority. See Department of the Air Force, Special Order GA-001, Court Martial Convening Authorities, ¶ 2 (October 8, 2002), Exhibit 8.

<sup>27</sup> The 34<sup>th</sup> Training Wing includes the following subordinate organizations: the 34<sup>th</sup> Training Group (responsible for operations of the Cadet Wing and for cadet military training), the 34<sup>th</sup> Education Group (responsible for Military Art, Science and Aviation courses), the 34<sup>th</sup> Operations Group (directs air operations at the Academy), the Center for Character Development, a Support Division, and a Safety Office. See Organization and Function Chartbook, at 27-36, Exhibit 9; and Statement of Brig Gen Gilbert, Exhibit 10, at 20.

<sup>28</sup> USAFA Instruction 36-173, ¶ 3.3.

<sup>29</sup> United States Air Force Academy Instruction 36-151, Permanent Professors, ¶ 2 (March 20, 2000) [hereinafter USAFA Instruction 36-151]. Permanent professors are appointed by the President, with advice and consent of the Senate and have certain grade and longevity privileges, however, the Secretary of the Air Force may exercise certain authority concerning their review and tenure. In addition to these positions, the Secretary of the Air Force may designate other professors. See 10 U.S.C. Chapter 903.

<sup>30</sup> Appendix E of this Report contains organizational charts for the Academy's leadership structure, including the Cadet Wing.

The duties of the AOCs are delineated in 34<sup>th</sup> Training Group Operating Instruction 36-12. Pursuant to the Instruction, a principal duty of the AOC is to serve as the “primary role model and mentor in the formation of cadet leadership skills and professional qualities.”<sup>31</sup> It is, therefore, important that these officers have appropriate qualifications, experience and maturity to fulfill this role. AOCs and MTLs are the permanent party oversight of the “cadet leadership laboratory.”<sup>32</sup> AOCs are also charged with the overall safety of their squadrons,<sup>33</sup> and are responsible for counseling cadets on any personal problems cadets might have (from “boyfriend-girlfriend” problems to financial difficulties). To fulfill this responsibility, AOCs are required to be knowledgeable of assistance agencies available for cadets.<sup>34</sup> AOCs are also responsible for ensuring that human relations training is emphasized among cadets, and for permitting only professional training, that is, training that does not violate the personal rights of any cadet, to take place within the Cadet Wing.<sup>35</sup>

#### ***D. Cadet Rank Structure***

In addition to the hierarchical structure of the Cadet Wing, the cadets also have status, based upon their class year. Freshmen cadets are called “Fourth-Class cadets” or “C4Cs,” with each succeeding class known as “Third-Class cadets” or “C3Cs,” “Second-Class cadets” or “C2Cs,” finishing with the seniors who are known as “First-Class cadets,” “C1Cs,” or “Firsties.”

At the bottom of the Academy rank structure, Fourth-Class cadets are in a unique status from the time they enter Basic Cadet Training (BCT) at the Academy in June prior to their first year until “Recognition,” which occurs in the Spring of their first year. During this time, Fourth-Class cadets are counseled, corrected and disciplined by cadets from the other three classes.<sup>36</sup> Fourth-Class cadets are restricted as to where they may go in the Academy, how they may walk (at double-time along the marble strips of the Terrazzo),<sup>37</sup> and what luxury items they may possess.<sup>38</sup> The manner in which Fourth-Class cadets interact with other cadets and officers is referred to as the fourth-class system.<sup>39</sup>

#### ***E. Cadet Officer Training Program***

Each cadet begins his or her Academy experience by attending Basic Cadet Training (BCT), which takes place in the summer months immediately before the first academic year. BCT is a

<sup>31</sup> 34<sup>th</sup> Training Group Operating Instruction 36-12, Officers and Enlisted Personnel Duties and Responsibilities, ¶ 5.1, Exhibit 11.

<sup>32</sup> *Id.* at ¶ 5.2.4.

<sup>33</sup> *Id.* at ¶ 5.2.3.2.

<sup>34</sup> *Id.* at ¶ 5.2.7.2.

<sup>35</sup> *Id.* at ¶ 5.2.9.

<sup>36</sup> This practice will be modified by the Secretary and the Chief of Staff's *Agenda for Change*. From now on, up until Thanksgiving of the first academic year, only First-Class cadets will be allowed to discipline Fourth-Class cadets. After that, some Second-Class cadets will have some training responsibilities towards Fourth-Class cadets. Third-Class cadets will be allowed to mentor or tutor Fourth-Class cadets, or provide them on-the-spot corrections. The exercise of discipline by a Third-Class cadet over a Fourth-Class cadet will always be governed by a First-Class cadet. *Agenda for Change*, Exhibit 4.

<sup>37</sup> The Terrazzo is the common area in the center of the cadet complex at the Academy.

<sup>38</sup> See AF Cadet Wing Instruction 36-2909, Conduct Standards, ¶ 3.16, Exhibit 12; AF Cadet Wing Instruction 34-601, Dormitory Standards, ¶ 4.3, Exhibit 13.

<sup>39</sup> See “What is the Fourth-Class System?,” Exhibit 126.

rigorous orientation program that introduces cadets to the strict discipline and team-building they will encounter over their four years at the Academy.<sup>40</sup>

The Academy's training focuses on four broad areas. These "pillars" are: professional military training, academics, athletics and character development.<sup>41</sup>

Professional military training focuses on the profession of arms and covers a broad range of topics aimed at preparing the cadets for military service. The curriculum covers such topics as officership, the art of war, military theory, and operations and doctrine.

The academic program begins with a core curriculum, which consists of courses in the basic and engineering sciences, social sciences, humanities, and military strategic studies. Cadets then may focus their advanced studies on one of thirty majors, including such areas as aeronautical engineering, behavioral sciences, civil engineering, economics, history, mathematical sciences, physics or space operations. Graduates of the Academy receive the Bachelor of Science (B.S.) degree.<sup>42</sup>

Air Force Academy athletic programs include physical education, intramural sports, and intercollegiate athletics. These programs are intended to develop characteristics associated with military leadership.

Character development is intended to be an essential part of the cadet's professional growth. Its foundation includes the Academy Honor Code and the three Core Values of the Air Force: *Integrity First*, *Service Before Self*, and *Excellence in All We Do*.

## F. Women at the Academy

### 1. Arrival of Women

From the inception of the Academy in 1954 until 1976, the Academy admitted only men.<sup>43</sup> When women were first admitted to the Academy in 1976,<sup>44</sup> certain changes were required to

<sup>40</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, at 4 (2002-2003 ed.), Exhibit 6. When speaking to senior-ranking cadets, and unless directed otherwise, cadets in BCT are entitled to give only seven basic responses: yes, Sir/Ma'am; no, Sir/Ma'am; no excuse, Sir/Ma'am; Sir/Ma'am, may I make a statement?; Sir/Ma'am, may I ask a question?; Sir/Ma'am, I do not understand; and Sir/Ma'am, I do not know.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at profile page.

<sup>43</sup> For a discussion of the history of women in the United States service academies, and the efforts to gain admission of women, see THE WOMEN'S ARMY CORPS, 1945-1978, Bettie J. Morden, 1990, at 318-23, available at <http://www.army.mil/cmh-pg/books/wac/>.

<sup>44</sup> On October 7, 1975, President Gerald R. Ford signed a law requiring that all military service secretaries "take such action as may be necessary and appropriate to insure that (1) female individuals shall be eligible for appointment and admission to the service academy concerned, beginning with appointments to such academy for the class beginning in calendar year 1976, and (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals." Department of Defense Appropriation Authorization Act, 1976, Public Law 94-106, October 7, 1975. For the law governing appointment of cadets to the Air Force Academy, see 10 U.S.C. § 9342. One hundred fifty-seven women and 1,436 men entered the Air Force Academy in 1976 as part of the Class of 1980. Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 2. Of those entering, ninety-seven women (62%) and 802 men (56%) graduated in 1980. *Id.* at 38.

accommodate the combined male and female cadet population. For example, the physical structure and operation of the Academy had been designed for a single-gender cadet population, so restroom, showering, and living facilities were divided up and modified to accommodate both genders. Although all women were assigned to squadrons of mixed gender, initially all female cadets lived in one area of one dormitory, separated from their male squadron mates.<sup>45</sup> In the spring of 1977, however, female cadets were moved to rooms located within their squadron areas but still congregated together near the women's bathrooms.<sup>46</sup> The practice of locating women in the dorms with their squadrons is a practice that is still maintained, however, they are now interspersed among the men's rooms and not clustered near the women's bathrooms.<sup>47</sup>

## 2. Treatment and Support of Women

The arrival of female cadets ushered in more than just formal institutional changes. While some men welcomed the addition of women to the cadet population, others adamantly opposed their presence.<sup>48</sup> Some male cadets had a perception that women were held to lower standards than men, or ridiculed women if they could not meet the same physical standards as men.<sup>49</sup> Some women felt like they were in a "fish bowl," where each female cadet's every move was scrutinized and reflected on female cadets as a group.<sup>50</sup> Some female cadets interviewed also report comments from some male cadets that women do not belong at the Academy.<sup>51</sup> Other current female cadets interviewed, however, said that they have encountered no such comments and do not experience the same feelings.<sup>52</sup>

In a 1994 GAO study on the DoD Service Academies, 59% of female students at the Air Force Academy reported experiencing one or more forms of harassment on a recurring basis.<sup>53</sup> An alumna from the 1993-94 timeframe, was told by male cadets that women were looking for their "Mrs. Degree," implying that they were only at the Academy to find a husband.<sup>54</sup> The same alumna stated that women experienced ridicule for not being able to perform to the same physical standards as the male cadets.<sup>55</sup> The immediate past Training Group Commander, Col Slavec, is an alumna of the first class of women to graduate from the Academy. Her recollection is of "really smart, [brilliant] women" being treated unmercifully because they could not meet the physical fitness standards, specifically running.<sup>56</sup> However, Col Slavec's view was that the harassment was "performance based" rather than gender based, that cadets merely picked on weaker cadets. She

<sup>45</sup> Statement of Female Academy Graduate, Exhibit 14, at 2.

<sup>46</sup> *Id.*

<sup>47</sup> Memorandum for Record, Interview with Group Superintendent, Exhibit 15.

<sup>48</sup> Statement of Female Academy Graduate, Exhibit 14, at 1.

<sup>49</sup> *Id.* at 2; Statement of Vice Commandant (1995-1998), Exhibit 46, at 7.

<sup>50</sup> Statement of Female Academy Graduate, Exhibit 14, at 1.

<sup>51</sup> Memorandum for Record, Group Interview with Female Cadets, Exhibit 56 (stating that comments are made to women such as "girls are ruining the AF"); Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57 (stating female cadet was told "girls don't belong here")

<sup>52</sup> Memorandum for Record, Interview of Female Fourth-Class cadet, Exhibit 18; Statement of Female First-Class cadet, Exhibit 19, at 2.

<sup>53</sup> GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 20. See also Section III.L, Social Climate Surveys. In a 1995 study, the GAO reported that seventy-eight percent of female cadets at the Academy reported experiencing at least one form of sexual harassment on a recurring basis in academic year 1993-94. GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 8.

<sup>54</sup> Statement of Anonymous Former Cadet, Exhibit 391, at 8.

<sup>55</sup> *Id.*

<sup>56</sup> Statement of Col Slavec, Commander, 34<sup>th</sup> Training Group, Exhibit 23, at 34.

acknowledges this performance-based harassment currently exists at the Academy.<sup>57</sup> Some cadets currently at the Academy who were interviewed said that sexual harassment is commonplace.<sup>58</sup> Some faculty and staff share that view.<sup>59</sup>

Formal and informal efforts to support female cadets have had varying levels of success over the years. Attention of all kinds focused on women after they were first admitted to the Academy and precipitated tight bonds among them as they tried to cope with their newcomer status.<sup>60</sup> Since 1976, several attempts have been made to establish networking groups for female cadets.<sup>61</sup> Most of these efforts were initiated by Academy staff and most faded over time with changes in personnel.<sup>62</sup> In 1993, then Superintendent Hosmer observed that women had, by that time, fit in well and one indication was their success as a group, both academically and in survival/POW training.<sup>63</sup> In 1994, the Academy hosted a Women in Leadership Symposium, which met with mixed reviews from the women: some applauded what they saw as an overdue effort to openly address women's issues, while other women did not appreciate the way such gatherings singled them out as women,<sup>64</sup> a sentiment that continues among some female cadets today.<sup>65</sup> In 2002, a group of Third-Class female cadets organized "Babes in Blue," a networking organization focused on the conflicts that arise for women among career, family, and relationships.<sup>66</sup>

### 3. Performance of Women Over Time

Statistical data on cadet admissions, performance, and post-graduation assignments by gender at the Academy dates back to the Class of 1980.<sup>67</sup> In the area of admissions, over the years, the Scholastic Aptitude Test (SAT) scores of incoming men and women have been roughly equal, on average, with women consistently scoring slightly higher on the verbal portion of the test and men consistently scoring slightly higher on the mathematics portion.<sup>68</sup> Men entering the Academy

<sup>57</sup> *Id.*

<sup>58</sup> Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25.

<sup>59</sup> See Statement of Faculty Member, Exhibit 26, at 3; Memorandum for Record, Memorandum for Record, Interview with Officer from Counseling Center, Exhibit 27, at 2; Memorandum for Record, Interview with Male Faculty Member, Exhibit 28; Statement of Staff Psychiatrist, 10th Medical Group/Life Skills Center, Exhibit 29, at 7; Statement of Chaplain, 10th Air Base Wing, Exhibit 30, at 5; Statement of Female TSgt, Military Training Leader, Exhibit 31, at 5; Statement of Female Group Chaplain, Exhibit 32, at 3; Statement of Director, Cadet Counseling Center, Exhibit 33, at 13 (all stating a high tolerance of sexual harassment among cadets); *but see* Statement of Male Squadron Air Officer Commanding (AOC), Exhibit 34; Statement of Male Squadron AOC, Exhibit 35, at 6; Statement of Male Squadron AOC, Exhibit 36, at 4; Memorandum for Record, Interview of Female First-Class cadet, Exhibit 19; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 2; Memorandum for Record, Interview of Male Fourth-Class cadet, Exhibit 38, at 2 (all stating there is not a sexual harassment problem); Statement of Female Military Training Leader, Exhibit 39, at 3 (stating that she does not believe there is an air of sexual harassment, but that neither is she [at the Academy] at midnight).

<sup>60</sup> Statement of Female Academy Graduate, Exhibit 14, at 1; Statement of Col Slavec, Commander, 34th Training Group, Exhibit 23, at 113.

<sup>61</sup> Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40.

<sup>62</sup> *Id.*

<sup>63</sup> Statement of Lt Gen Hosmer, Former Superintendent, Exhibit 45, at 4-6.

<sup>64</sup> *Id.*

<sup>65</sup> Statement of Col Slavec, Exhibit 23, at 112-113.

<sup>66</sup> Talking Paper on USAFA Women's Networking Group ("Babes in Blue"), Exhibit 40.

<sup>67</sup> See Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7. This data also includes various admissions statistics.

<sup>68</sup> *Id.* at 7-9.

have qualified medically for pilot and navigator positions at a rate consistently about twenty-five percent higher than women.<sup>69</sup>

The Academy tracks attrition, leadership selection, and cadet academic performance by gender. Three attrition rates tracked by graduating class at the Academy are entry-level losses during Basic Cadet Training (BCT), losses after BCT but during the Fourth-Class (freshman) year, and overall losses between BCT completion and graduation. Many years have shown BCT loss rates higher for women than men, but the BCT loss rates by gender have been converging considerably for the Classes of 2003-2005.<sup>70</sup> Post-BCT attrition during the Fourth-Class year has been largely equal for men and women since the Class of 1984.<sup>71</sup> Overall post-BCT losses were consistently higher among women until the Class of 1993, after which the overall loss rate has been slightly higher among men for all but two classes.<sup>72</sup> A small number of cadets are selected by active duty and cadet leaders for leadership positions in the Cadet Wing each semester.<sup>73</sup> This small number, combined with the relatively small number of female cadets, produces widely varying gender percentages in cadet leadership selection.<sup>74</sup> In general, female cadets are chosen near or above their overall proportion to the cadet population for squadron, group, and wing staff positions, but consistently below their overall proportion for squadron commander positions.<sup>75</sup> In terms of grade point average, since the early 1980s, the academic performance of male cadets is generally slightly higher than that of female cadets for the Fourth-Class (freshman) year and the first semester of the Third Class (sophomore) year.<sup>76</sup> Since the early 1990s, grades for female cadets have been slightly higher the first semester of the Second-Class (junior) year.<sup>77</sup> In the same time frame, the grades of First-Class (senior) female cadets have consistently been equal to or slightly higher than the grades of male cadets.<sup>78</sup>

Graduation statistics reflect variances among the genders. In only four classes throughout the 1980s and 1990s did female cadets graduate at a higher rate than male cadets.<sup>79</sup> In the Classes of 2000 and 2001, female cadets graduated at a higher rate than males.<sup>80</sup> As long as women have attended the Academy, they have qualified medically at graduation for pilot and navigator positions. The average rate of female cadets who qualify is, on average, thirty percent lower than the rate for male cadets.<sup>81</sup> In the area of majors awarded, female cadets achieve social sciences, basic sciences, humanities, and interdisciplinary degrees at rates higher than men.<sup>82</sup> In the two remaining categories (engineering and basic academics), men are awarded degrees at rates higher than women.<sup>83</sup> Men have been awarded engineering degrees at twice the rate of women.<sup>84</sup>

<sup>69</sup> *Id.* at 12-13.

<sup>70</sup> *Id.* at 17-23.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* BCT losses were twice as high or higher for women in 1984, 1989, 1995, 1997 and 1999.

<sup>73</sup> *Id.* at 24-27. Cadets apply for leadership positions within the Cadet Wing. Statement of First-Class cadet, Exhibit 41, at 1.

<sup>74</sup> Statistical Summaries of USAFA Cadets & Graduates, March 2002, Exhibit 7, at 24-27.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 28-31. Since 2001, however, academic performance of females has been slightly higher than the performance of males in the first semester of the third class year. *Id.*

<sup>77</sup> *Id.* at 30-31.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 38-41.

<sup>80</sup> *Id.* at 40-41.

<sup>81</sup> *Id.* at 38-41. Approximately twenty-five percent of females and nearly sixty percent of males complete aeronautical training and achieve aeronautical ratings. *Id.* at 49-54.

<sup>82</sup> *Id.* at 42-44.

<sup>83</sup> *Id.* Basic Academics changed to Bachelor of Science with the Class of 1991.

### III. The Academy's Program to Deter and Respond to Incidents of Sexual Assault

#### *A. The 1993 Sexual Assault Program and Its Evolution*

##### 1. January 1993 through June 1994

Reported cases of sexual assault did not become a prominent issue at the Academy until the early 1990s.<sup>85</sup> Following an alleged sexual assault in February 1993, the Academy introduced a program for deterring and responding to reports of sexual assault.<sup>86</sup> Desiring to provide a victim-friendly program that would encourage reporting,<sup>87</sup> the Academy developed a program that is different in both organization and process from that employed in the rest of the Air Force. The sexual assault program introduced in 1993 was formalized by an Academy instruction in 1997<sup>88</sup> and has remained substantially unchanged until adoption of the *Agenda for Change* in March 2003.

In early 1993, a female cadet reported that she was sexually assaulted near the Academy gymnasium.<sup>89</sup> The Superintendent at the time, Lieutenant General Bradley C. Hosmer, initiated an Air Force Office of Special Investigations (AFOSI) criminal investigation into the case.<sup>90</sup> The Superintendent also reached out to the cadet population to find out the pervasiveness of the sexual assault problem at the Academy.<sup>91</sup> Lieutenant General Hosmer called a meeting with all of the female cadets in order to gain a better understanding of the problem. He started the meeting by removing his rank insignia and telling the female cadets, "I'm here as somebody who needs to know the ground truth."<sup>92</sup> He distributed a questionnaire and engaged in a discussion with the cadets about their experiences and perceptions related to sexual harassment and sexual assault. The meeting confirmed to Lt Gen Hosmer that the problem was significantly greater than he previously suspected.<sup>93</sup>

<sup>84</sup> *Id.*

<sup>85</sup> According to one retired female officer, there were no reported sexual assaults of which she was aware during her three-year tour as an AOC at the Academy from 1984 to 1987. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 9. See also Statement of Female Academy Graduate, Exhibit 14, at 2; Statement of Lt Gen Hosmer, Exhibit 45, at 10-11; Background Paper on USAFA Assault Response and Education Program, Exhibit 42, at 1.

<sup>86</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 11-12; see also GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43, at 49-50. The GAO Report referenced a sexual assault allegation that prompted the Superintendent to conduct an inquiry into whether the incident "represented an isolated event" or whether it was a "symptom of broader more underlying problems." *Id.* Lieutenant General Hosmer stated that he was aware that sexual assault incidents had occurred prior to 1993, but that the issue did not come to the forefront until the alleged incident in early 1993. Statement of Lt Gen Hosmer, Exhibit 45, at 11.

<sup>87</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 15, 17-18.

<sup>88</sup> USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, (July 15, 1997), Exhibit 86; see also Background Paper on USAFA Sexual Assaults, Exhibit 385, at 2.

<sup>89</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 11-12.

<sup>90</sup> *Id.* at 12. According to Lt Gen Hosmer, he "quintuple[d]" the size of the Academy's AFOSI detachment in an effort to solve the crime. *Id.* He recalled the AFOSI interviewed hundreds of male cadets, but no perpetrator was ever identified. *Id.* For more information on this investigation, see OSI Case Summaries, Exhibit 58, at 5-6.

<sup>91</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 12-15.

<sup>92</sup> *Id.* at 13.

<sup>93</sup> Lieutenant General Hosmer found incidents of harassment were four or five times greater than assaults, and most of the assaults were groping incidents. He was surprised there were incidents of alleged rape. *Id.* at 14. Through an informal, non-scientific survey of female cadets, the Superintendent learned that "a tenth or less" of the female cadets at that time said they had been raped since entering the school, a number he found quite alarming. *Id.* at 14-15. The only other non-Academy comparison data available to the Superintendent at the time was a study that, to his recollection, suggested approximately twenty-five percent of female college students experience a rape situation before graduating from college. *Id.* at 14.

Based on the feedback he received from the cadets, Lt Gen Hosmer, initiated certain changes to the services offered by the Academy to victims of sexual assault.<sup>94</sup> First, the Superintendent addressed issues relating to the Cadet Counseling Center, which was established in 1957 as a resource for cadets to receive personal counseling on issues of concern.<sup>95</sup> With respect to reporting issues of sexual assault to the Cadet Counseling Center, cadets expressed a lack of trust in any "confidentiality" that the Cadet Counseling Center could offer to the cadets since the Cadet Counseling Center at the time was under the Training Wing chain of command.<sup>96</sup> To address this concern, the Superintendent commissioned a twenty-four hour sexual assault "Hotline" in 1993 operating outside the cadet chain of command, through which cadets could seek counseling and support with confidentiality assured.<sup>97</sup> Second, to encourage official reporting of sexual assaults by allaying victim fear of discipline for their own misconduct related to sexual assault incidents (*e.g.*, alcohol infractions), the Superintendent instituted a policy of case-by-case victim amnesty, wherein the victim's chain of command could promise to forgo punishment of victim misconduct related to the sexual assault incident before the victim provided information about the incident.<sup>98</sup>

Lieutenant General Hosmer also made more generalized efforts in cadet character development programs that indirectly affected sexual assault issues.<sup>99</sup> He commissioned the Center for Character Development in 1993.<sup>100</sup> The mission of the Center, to be run under the supervision of the Commandant, was to assess the character makeup of cadets and develop education and training programs to improve the overall character of the cadet population.<sup>101</sup> Center activities that impacted sexual assault issues focused on setting and enforcing standards in Fourth-Class cadets (freshmen), particularly during Basic Cadet Training, so that cadets knew what standards of conduct were expected of them, and the limits of authority of upperclass cadets over them.<sup>102</sup>

As a general matter, the focus of the 1993 sexual assault program was on victim support. To Lt Gen Hosmer, providing confidentiality and amnesty to victims to encourage them to get help was of paramount importance.<sup>103</sup> Bringing the alleged assailant to justice, while a concern, did not appear to be a primary concern at the time.<sup>104</sup> Only if and when victims became ready, would they be encouraged to bring their complaints to AFOSI for investigation and potential prosecution under

<sup>94</sup> *Id.* at 15.

<sup>95</sup> Statement of Director, Cadet Counseling Center, Exhibit 47, at 22.

<sup>96</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 15-17. This was a commentary on the command relationship of the Counseling Center reporting to the Commandant, not on the quality of service provided. *Id.* In fact, when the Superintendent later established the sexual assault Hotline, it was run substantially by the same personnel, but under a different chain of command.

<sup>97</sup> *Id.* at 15-18. The Hotline was run by the base medical group, which was under the chain of command of the Superintendent, but was not controlled by the Training Wing, under which cadet supervision fell. *Id.* at 18.

<sup>98</sup> *Id.* at 22-24. This policy did not address amnesty for other cadet witnesses that may have known information related to a particular sexual assault incident. *Id.* at 23. The Academy amnesty policy is discussed in detail in the "Amnesty" section of this report. See this Report, Section III.E., Amnesty for Infractions.

<sup>99</sup> *Id.* at 25; see also Statement, Brig Gen Wagie, Exhibit 198, at 4, 45.

<sup>100</sup> See *Id.* at 25; see also Statement, Brig Gen Wagie, Exhibit 198, at 4, 45.

<sup>101</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 25-26.

<sup>102</sup> See *Id.* at 26.

<sup>103</sup> *Id.* at 16-21.

<sup>104</sup> *Id.* at 16-21, 29.

the Uniform Code of Military Justice (UCMJ).<sup>105</sup> Under this approach, the victim had control over whether an investigation or prosecution would commence.<sup>106</sup>

The General Accounting Office (GAO) issued a report on sexual harassment at all service academies in 1994.<sup>107</sup> The GAO identified ongoing sexual harassment problems at the academies.<sup>108</sup> When interviewed, Lt Gen Hosmer could not recall seeing GAO sexual harassment reports that raised issues beyond those he was hearing from the women themselves.<sup>109</sup> The Academy conducted its own social climate surveys beginning in academic year 1991-1992.<sup>110</sup> From 1993-1995, the Academy's Institutional Research Division summarized and analyzed survey results.<sup>111</sup> During Lt Gen Hosmer's tenure, however, the surveys did not include questions on sexual assault.<sup>112</sup>

## 2. July 1994 through July 1997

Lieutenant General Paul E. Stein took over as Superintendent of the Academy when Lt Gen Hosmer retired in 1994.<sup>113</sup> Lieutenant General Stein saw sexual assault as an important issue.<sup>114</sup> To address issues of perceived lack of trust in AFOSI to investigate cases of sexual assault, he arranged for assignment of a female special agent with specialized training in sexual assault investigations in an effort to make female cadets more comfortable with the investigative process.<sup>115</sup> He also persuaded AFOSI to upgrade the AFOSI detachment commander position to be filled by a Major (O-4) instead of a Captain (O-3) to provide more experienced investigative supervision.<sup>116</sup> In addition, beginning in 1996, the Vice Commandant organized recognition of Sexual Assault Awareness Month each year, receiving a surprisingly strong and candid response from cadets who wanted to get involved in program activities.<sup>117</sup>

<sup>105</sup> *Id.* at 17-21.

<sup>106</sup> *See id.* Lieutenant General Hosmer stated that he recognized the tension between maintaining victim confidentiality while providing them needed support and the need to bring assailants to justice, but he believed support was most important and that providing support would lead to more investigations because more victims would trust the system. The conflict between encouraging reporting and punishing offenders is discussed in detail in Section III.D.6., Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

<sup>107</sup> GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21. This followed another report issued by the GAO in 1993. GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43. *See* this Report, Appendix E, *Relevant Reports*.

<sup>108</sup> GAO Report, DoD Service Academies, Further Actions Needed to Eradicate Sexual Harassment, Statement by Mark E. Gebicke before the Subcommittee on Force Requirements and Personnel, Committee on Armed Services, U.S. Senate (January 1994), Exhibit 48, at 2 (testifying that "[t]he academies have not met the goal . . . of providing an environment that is free from sexual harassment").

<sup>109</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 8.

<sup>110</sup> The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy, Connie J. Johnmeyer, Exhibit 49, at 11.

<sup>111</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

<sup>112</sup> The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy, Connie J. Johnmeyer, Exhibit 49, at 11. Sexual assault questions were added to the Social Climate Survey in 1996. *Id.*

<sup>113</sup> Lieutenant General Stein died on January 9, 2002. [http://www.af.mil/news/biographies/stein\\_pe.html](http://www.af.mil/news/biographies/stein_pe.html).

<sup>114</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 36; Statement of Victim Advocate Coordinator, Exhibit 50, at 45.

<sup>115</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 22; and Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 8-9.

<sup>116</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16, 22.

<sup>117</sup> *See id.* at 24.

Lieutenant General Stein was concerned that sexual assault victims might be reluctant to come forward for assistance because the Cadet Counseling Center was part of the Center for Character Development, a Training Wing organization under the control of the Commandant, the person with primary responsibility for the cadet disciplinary process. He focused on resolving the issue, and in late 1996 or early 1997, the Cadet Counseling Center was realigned and moved under the Dean of the Faculty, and attached to the Department of Behavioral Sciences and Leadership.<sup>118</sup> Lieutenant General Stein believed the realignment, which clearly separated counseling services from the disciplinary process and placed them under the control of different Academy elements, would enhance cadet confidence and comfort, making them more willing to come forward for help.<sup>119</sup> Once again, the primary focus was not on bringing assailants to justice.

During this period, support mechanisms for victims of sexual assault were expanded and procedures for the confidential Hotline were revised so victims could omit their name altogether from Counseling Center records.<sup>120</sup> (The Commandant and Superintendent were still informed that an incident had occurred, but were not told who was involved unless the victim consented to such disclosure.)<sup>121</sup> Cadet volunteers began taking calls to the Sexual Assault Hotline on January 1, 1996.<sup>122</sup> In addition to adding a female agent trained in handling sexual assault investigations to the AFOSI detachment, a clinical psychologist was added to the staff of the Center for Character Development with a focus on victim support and encouraging victims to bring allegations forward.<sup>123</sup> Meanwhile, the confidentiality and case-by-case victim amnesty policies continued for the victims who provided their names to the Cadet Counseling Center.<sup>124</sup> These policies, as well as the Sexual Assault Services Committee, were formalized with the promulgation of Headquarters United States Air Force Academy Instruction (USAFA Instruction) 51-201 in the summer of 1997.<sup>125</sup> Military Training Airmen (MTAs), now called Military Training Leaders (MTLs), were assigned to each cadet squadron at the Academy in 1996, adding a leadership and communication resource to the Cadet Wing.<sup>126</sup>

In 1995, the Academy established the Sexual Assault Services Committee.<sup>127</sup> The Sexual Assault Services Committee was then composed of representatives from the Training Wing, the Cadet Counseling Center (staff and cadet members), the Center for Character Development, the

<sup>118</sup> Statement of Director, Center for Character Development (1996 to 2002), Exhibit 261, at 2. As a result of the realignment, the Center for Character Development transferred some personnel authorizations and a portion of its budget to the Department of Behavioral Sciences and Leadership. *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 20.

<sup>121</sup> *Id.*

<sup>122</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 49. Twenty-four cadets responded to the initial request for volunteers. *The Road to Zero Tolerance*, Exhibit 49, at 19. The following semester an additional forty-six cadets volunteered, bringing the total to seventy. *Id.*; see also Background Paper on USAFA Assault Response and Education Program, Exhibit 42, at 2.

<sup>123</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 22.

<sup>124</sup> *Id.*

<sup>125</sup> USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, (July 15, 1997), Exhibit 86; see also Background Paper on USAFA Sexual Assault and Education Program, Exhibit 42, at 1-2. The Instruction was revised in 2000. USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, April 18, 2000, Exhibit 55. For a discussion of the revisions, see this Report, Section III.D., The Unique Reporting System.

<sup>126</sup> Statement of 34th Training Wing Superintendent, Exhibit 54, at 4. These MTLs were "hand-picked" and were all Master Sergeants. *Id.*

<sup>127</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16.

medical group, AFOSI, Security Forces, and the Legal Office.<sup>128</sup> The Vice Commandant serves as the chairperson of the Sexual Assault Services Committee.<sup>129</sup> The purpose of the Sexual Assault Services Committee was to integrate the various sexual assault services at the Academy, facilitate the exchange of information among its participants, and to permit discussion of sexual assault cases and issues.<sup>130</sup> From its inception in 1995 through June 1998, the Sexual Assault Services Committee usually met monthly, but consistently at least twice per quarter, and received information on sexual assaults and sexual harassment.<sup>131</sup> According to the Vice Commandant at the time, she kept both the Commandant and the Superintendent informed about Sexual Assault Services Committee issues and what was said at the meetings, including information on incidents reported anonymously to the Cadet Counseling Center.<sup>132</sup>

In 1995, the GAO issued a follow-on report to its 1994 report on sexual harassment at the service academies.<sup>133</sup> This report showed that sexual harassment had not improved at any of the academies, and found that seventy-eight percent of Air Force Academy female cadets responding indicated they were harassed on a recurring basis, a significant increase over the fifty-nine percent in an academic year (AY) 1990-1991 study.<sup>134</sup> The Working Group found no evidence that Academy leadership took any direct action in response to the 1995 GAO report, although Climate Surveys and Center for Character Development activities were ongoing.

The Academy conducted Social Climate Surveys in the Spring of each year while Lt Gen Stein was Superintendent, until 1996 when the survey was moved to the Fall.<sup>135</sup> Lieutenant General Stein initiated and closely monitored a Process Action Team that met periodically to evaluate the Academy's social climate and the survey instrument used to measure that climate.<sup>136</sup> This culminated in a revised Social Climate Survey first used in 1996, a survey that included sexual assault questions for the first time.<sup>137</sup> The sexual assault results of the 1996 survey were summarized, but do not appear to have been presented to leadership during that time.<sup>138</sup>

<sup>128</sup> In addition to the original organizations represented in the Committee's membership, more were added over time. By the time the Vice Commandant from 2001 to 2002 took over as chairperson, he believed the Committee "might have been almost too big and it caused some drag on its ability to function." Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17. He believed there were "too many people from too many organizations" attending the meetings. *Id.* at 21.

<sup>129</sup> *Id.* at 16-18.

<sup>130</sup> *Id.* at 17-18.

<sup>131</sup> *Id.* at 17-18.

<sup>132</sup> *Id.* at 36. The Vice Commandant commented that "General Stein, in particular, was very attuned to what was going on....he was so concerned over the issue that he wanted to know everything that happened." *Id.*

<sup>133</sup> GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22.

<sup>134</sup> *Id.* at 8. For further discussion of GAO reports, see *infra*, "Relevant Reports," at "Appendix E."

<sup>135</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53; see also *The Road to Zero Tolerance*, Exhibit 49, at 22-23. In 1996, a survey was administered in the Spring and in the Fall. Academy Climate Survey Data, AY 1993-2002, Exhibit 53. For further information, see this Report, Section III.I, Social Climate Surveys.

<sup>136</sup> Statement of Former Director, Counseling Center, Exhibit 60, at 2. While Lt Gen Stein was substantially involved in establishing and monitoring the progress of the Process Action Team, it was chaired by Brig Gen Wagie. E-mail from Director of Curriculum, Squadron Officer College (former Director of Cadet Counseling Center), Exhibit 61.

<sup>137</sup> Results of Social Climate Surveys, AY 1993-1998, Exhibit 53.

<sup>138</sup> Memorandum for Record, Group Interview with Academy Personnel, re: Social Climate Survey Data, Exhibit 62.

## 3. August 1997 through June 2000

Lieutenant General Tad J. Oelstrom became Superintendent when Lt Gen Stein retired in the Summer of 1997.<sup>139</sup> USAFA Instruction 51-201 took effect in July 1997, right before Lt Gen Oelstrom arrived.<sup>140</sup> This Instruction, though landmark in nature and inconsistent in some respects with overall Air Force policy,<sup>141</sup> did not bring about great change at the Academy. That is because many of the important aspects of the Instruction, e.g., access to counseling, counseling confidentiality, victim amnesty, the Sexual Assault Services Committee, had been implemented in the years before the Instruction was in effect. However, the Instruction did serve the purpose of defining responsibilities and services in a single document accessible to all cadets and staff.

Lieutenant General Oelstrom stated that beginning with his appointment as Superintendent, he sought to acquire a good understanding of the acceptance and progress of women at the Academy.<sup>142</sup> After receiving input on these issues for six to seven months, he concluded that the progress, competitiveness, and performance of female cadets were remarkable, and that women had been well accepted into the Academy by that time.<sup>143</sup> As such, his focus as Superintendent was more on high-level character issues and less on specific issues such as command responses to sexual assault and gender climate issues. Instead, the Commandants, Vice Commandants, and personnel in the Cadet Counseling Center guided sexual assault response and gender climate initiatives.

Lieutenant General Oelstrom believed that mutual support among cadets, including respect for each other, was the key to avoiding many character-related problems, including sexual misconduct.<sup>144</sup> His efforts to improve mutual support at the Academy focused on respect for one another, taking care of each other, and following the rules.<sup>145</sup> Although he could not quantify or enumerate ways he changed character development education, Lt Gen Oelstrom recalls asking for and receiving frequent input on the issue from the various components at the Academy.<sup>146</sup> During Academic Year 1998-1999, he commissioned an outside Character Development Review Panel, led by Lt Gen (retired) Hosmer, a former Superintendent, to review all Academy character development programs.<sup>147</sup> The final results of this review were not completed before Lt Gen Oelstrom's retirement, but he did not recall receiving any preliminary concerns from the panel about sexual harassment or sexual assault.<sup>148</sup>

<sup>139</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 4. See also Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

<sup>140</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 10; see Statement of Maj Gen Lorenz, Exhibit 52, at 41-42.

<sup>141</sup> See this Report, Section III.G., Victim Support; Section III.E., Amnesty for Infractions; and Section III.D., the United Reporting System, for detailed discussion of the differences between USAFA Instruction 51-201 and the Air Force-wide policy. This Instruction was established in 1997 in coordination with the Air Force Inspector General, the Air Force Judge Advocate General, the Air Force Office of Special Investigations, and the Air Force Surgeon General. Statement of Maj Gen Lorenz, Exhibit 52, at 33.

<sup>142</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 9. Lieutenant General Oelstrom also was interested in understanding several cadet-related issues, including what motivated cadets to be officers, a perceived lack of motivation to become pilots upon graduation, the integration of intercollegiate athletes within the Cadet Wing, as well as the strength and direction of the Honor Code. *Id.* at 6-7.

<sup>143</sup> *Id.* at 11-12.

<sup>144</sup> *Id.* at 15-18. Lieutenant General Oelstrom recalls bringing up mutual support in the context of sexual conduct and sexual misconduct during annual meetings recognizing the rising first classmen chosen for leadership positions in the following academic year. *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 18-20.

<sup>147</sup> *Id.* at 19-20.

<sup>148</sup> *Id.* at 20.

Major General Stephen R. Lorenz (then, Brigadier General) was the Commandant from August 1996 to June 1999, and had been in place for almost a year when Lt Gen Oelstrom arrived.<sup>149</sup> He recalled there were ten cadet disciplinary actions involving alcohol during his first two months as Commandant. He formed a Process Action Team, a team that included cadets, to assess the problem, and he implemented new alcohol policies.<sup>150</sup> First, he closed the Sports Bar located in Arnold Hall for two months to get the cadets' attention.<sup>151</sup> Second, he significantly increased the punishment for alcohol offenses under the cadet disciplinary system.<sup>152</sup> Finally, he instituted a policy that any cadet with two alcohol infractions would be recommended for disenrollment and five or six cadets were subsequently disenrolled.<sup>153</sup> He thought alcohol was a contributing factor in most sexual assaults, and while a sexual assault was not the impetus for his focus on alcohol-related misconduct, he believed it would have a corresponding impact.<sup>154</sup>

Lieutenant General Oelstrom made efforts to refine the four-class system to emphasize the unique responsibilities of leadership as cadets move up through the classes.<sup>155</sup> Through the Center for Character Development, he sought to include female role models in annual character and leadership symposiums begun during his time as Superintendent.<sup>156</sup> Brigadier General Mark A. Welsh<sup>157</sup> became the Commandant in June 1999 and served in that capacity until August 2001.<sup>158</sup> In Spring 2000, the twenty-year anniversary of the first graduating class with women, Brig Gen Mark Welsh requested a twenty-year status report of women at the Academy.<sup>159</sup> As part of this information gathering effort, a series of focus groups of male and female cadets were conducted to identify and discuss gender issues, and a panel of current and former female cadets met to identify ways to better integrate women at the Academy.<sup>160</sup> According to Brig Gen Welsh, the groups did not raise sexual harassment or sexual assault as significant areas of concern, but did note that some male cadets continued to make inappropriate comments.<sup>161</sup> During Brig Gen Welsh's term as Commandant, and at his direction, the Center for Character Development redesigned lesson plans to

<sup>149</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 2. Major General Lorenz was a Brigadier General during his tour at the Academy and is generally referred to as such in references to that period.

<sup>150</sup> According to the Vice Commandant, Maj Gen Lorenz required cadets involved in alcohol infractions to report to the Commandant's office the next duty day, along with the cadet's AOC, and brief the Commandant and Vice Commandant on what actions were being taken to ensure this did not happen again in that cadet squadron. Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 15-16.

<sup>151</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 21. Major General Lorenz said at the Sports Bar, "the emphasis was on bar, not sports." *Id.*

<sup>152</sup> *Id.* The standard punishment was restriction to the cadet area for three months and thirty tours (one tour is one hour of marching with a rifle). Major General Lorenz increased the standard punishment to eighty demerits, eighty tours and restriction for five months. *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 39-40. One of the specific changes he made was to remove the authority of Third-Class cadets to train Fourth-Class cadets. *Id.* at 41-42.

<sup>156</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 61-62.

<sup>157</sup> Brigadier General Welsh has been selected for Major General, but is referred to throughout this report by his current rank.

<sup>158</sup> Statement of Brig Gen Welsh, Former Commandant, Exhibit 64, at 3-4.

<sup>159</sup> Statement of Brig Gen Welsh, Exhibit 64, at 19. See also Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40.

<sup>160</sup> Statement of Brig Gen Welsh, Exhibit 64, at 20-22. The panel was chaired by Col Debra D. Gray, then a Lieutenant Colonel and the Deputy Commander of the 34<sup>th</sup> Training Group. See Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40. Col Gray became the Vice Commandant in April 2003.

<sup>161</sup> Statement of Brig Gen Welsh, Exhibit 64, at 21.

address the issue of gender-based name-calling, mainly as a result of the comments from the focus groups.<sup>162</sup>

Brigadier General Welsh invited Lt Gen Oelstrom to address the Cadet Wing in Spring 2000 as part of a lecture series sponsored by the Commandant of Cadets. The Dean of the Faculty adjusted the academic schedule so all cadets could attend. Lieutenant General Stein remained during to speak on his Air Force experiences, but he chose to use the opportunity to talk specifically about character. His remarks focused on the importance of relationships and he stressed the value of diversity and the need for respect for all people. Brigadier General Welsh said the lecture was very good.<sup>163</sup>

During Lt Gen Oelstrom's term as Superintendent in the late 1990's, the victim support mechanisms created under prior Superintendents continued, with some minor refinements. The presumption of victim amnesty practiced under Lt Gen Hosmer and Lt Gen Stein remained during Lt Gen Oelstrom's tenure.<sup>164</sup> During Academic Year 1999-2000, the Commandant and Vice Commandant, with the assistance of the Cadets Advocating Sexual Integrity and Education (CASIE) Program Manager, developed a form that the Cadet Counseling Center could use to pass on more information concerning reports of sexual assaults to the Commandant.<sup>165</sup> (The form was subsequently modified and shortened prior to academic year 2001-2002).

In late 1999 or early 2000, AFOSI headquarters expressed concern about the Academy's unique sexual assault program and sought at least initially to effect a change to implement regular Air Force reporting and investigative procedures.<sup>166</sup> Lieutenant General Oelstrom met with his Staff Judge Advocate and discussed AFOSI's concern and the Academy's position with respect to AFOSI's desire for change. Lieutenant General Oelstrom supported the Academy's existing program and he tasked his Staff Judge Advocate to take the lead in resolving the disagreement with AFOSI.<sup>167</sup> The Academy's Staff Judge Advocate engaged with representatives of AFOSI headquarters and other Air Force agencies with an interest in the matter.<sup>168</sup> The group met to discuss the issue in Washington, D.C., in March 2000.<sup>169</sup> The issue remained unsettled at the time Lt Gen Oelstrom relinquished command to Lt Gen John R. Dallager in June 2000, but it was resolved in Spring 2001.<sup>170</sup>

The Academy conducted Social Climate Surveys in Fall 1997, Fall 1998 and Spring 2000.<sup>171</sup> In December 1998, the Chief of Sexual Assault Services (a division of the Cadet Counseling Center) provided a briefing to the "Top Six," including the Superintendent (or possibly his executive officer in his behalf), the Commandant, the Dean of the Faculty, the Vice Commandant,

<sup>162</sup> *Id.*

<sup>163</sup> Statement of Brig Gen Welsh, Exhibit 65, at 53.

<sup>164</sup> Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 17.

<sup>165</sup> Statements of Brig Gen Welsh, Exhibit 64, at 29-31, and Exhibit 65, at 11-12; Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 12-13.

<sup>166</sup> Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 7.

<sup>167</sup> *Id.* at 7-14.

<sup>168</sup> *Id.* at 10. See E-mail, Re: Academy Procedures re: Sexual Assaults, AF/JAG and SAF/GCM, January 10, 2000, Exhibit 92, and E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

<sup>169</sup> Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 5-7.

<sup>170</sup> Further discussion of this issue follows in the description of Lt Gen Dallager's tenure as Superintendent.

<sup>171</sup> During the Fall of 1999, the Academy decided to switch survey administration back to the Spring of each year instead of the Fall. For a comprehensive discussion of Social Climate Survey administration and results, see this Report, Section III.I, Social Climate Surveys.

the Training Group Commander, and the Athletic Director.<sup>172</sup> The briefing began with a slide with the words "We Have a Problem," and the presentation referenced "Cadet Statistics on Sexual Assault."<sup>173</sup> The briefing addressed the results of the 1997 Social Climate Survey and showed that an estimated twenty-four percent (this figure appears to be a mathematical error in the slide and should have been fifteen percent) of female cadets (and two percent of male cadets) had been sexually assaulted since coming to the Academy.<sup>174</sup> The briefing also indicated that ten percent of female (and two percent of male) respondents indicated they had been assaulted in the past year.<sup>175</sup> The purpose of the briefing was to obtain approval for a somewhat controversial addition to the sexual assault prevention curriculum, a videotape relating to sexual assault on a male.<sup>176</sup> The videotape was added to the sexual assault training program.<sup>177</sup>

The 1998 and 2000 Social Climate Surveys were marked by a low response rate (fifteen percent and eight percent, respectively, compared to seventy-nine percent and fifty-seven percent in 1996 and 1997), causing survey administrators to question the surveys' results.<sup>178</sup> Of the female respondents to the 1998 and 2000 surveys, eleven percent (twelve of 108 female respondents) and thirteen percent (nine of seventy-one female respondents), respectively, indicated they had been sexually assaulted while at the Academy.<sup>179</sup> The sexual assault results of the 1998 and 2000 surveys were summarized, but do not appear to have been presented to Academy leadership during this period.<sup>180</sup> Notably, the Process Action Team begun under Lt Gen Stein to monitor the social climate and its measurement was not continued under Lt Gen Oelstrom. However, the Sexual Assault Services Committee met monthly, or bi-monthly, during Lt Gen Oelstrom's term as Superintendent, and the Commandant or Vice Commandant served as the chairperson.<sup>181</sup> A Counseling Center representative would discuss statistics on Counseling Center sexual assault

<sup>172</sup> Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2; Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 22-23.

<sup>173</sup> Briefing slides, Seattle Tape, Exhibit 69 (emphasis in original).

<sup>174</sup> *Id.* Based on the numbers included in the chart (an estimated ninety-nine of 660 female cadets), the correct percentage of females should have been fifteen percent rather than twenty-four percent. (The fifteen percent figure is also consistent with other available information). Academy Climate Survey Data, AY 1993-2002, Exhibit 53. If anything, however, the incorrect figure represented more of a problem than actually existed.

<sup>175</sup> *Id.*

<sup>176</sup> Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2.

<sup>177</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 72-73.

<sup>178</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

<sup>179</sup> *Id.* The 1998 and 2000 surveys did not include a question on whether respondents had been sexually assaulted at the Academy within the year preceding the survey. The way the questions were worded, overall responses could have included assaults away from the Academy or by non-cadets. For a comprehensive discussion see this Report, Section III.I., Social Climate Surveys.

<sup>180</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

<sup>181</sup> During Lt Gen Oelstrom's term, the Committee was chaired by either the Commandant or the Vice Commandant. Maj Gen Lorenz chaired many of the meetings and they were conducted monthly. Statement of Maj Gen Lorenz, Exhibit 52, at 43; statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2 (stating the Maj Gen Lorenz held monthly meetings). In his absence, the Vice Commandant chaired the meeting. The Vice Commandant from 1995 to 1998 said she held monthly meetings, although they may have been twice per quarter near the end of her tenure. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16-17. The Vice Commandant (1998 to 1999) said he held monthly meetings, or about every other month. Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 9-10. The Vice Commandant (1999 to 2000) thought he held meetings quarterly, although he said, "I may be wrong." Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10. Other information indicates he was indeed in error. Minutes from the September 2000 meeting, the earliest minutes available, show the monthly meeting schedule for the remainder of calendar year 2000. Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70. The Victim Advocate Coordinator was present throughout this period and recalled that the Committee did not go to a quarterly schedule until 2001. Statement of Victim Advocate Coordinator, Exhibit 50, at 136.

reports at the meetings.<sup>182</sup> During Lt Gen Oelstrom's term, the Commandant received legal advice from the 10<sup>th</sup> Air Base Wing Legal Office (10 ABW/JA) and the Academy Legal Office (USFA/JA) at the bimonthly "Cops and Robbers" meetings, at which any pending sexual assault investigations were discussed.<sup>183</sup>

#### 4. June 2000 through April 2003.

Lieutenant General John R. Dallager became Superintendent of the Academy in June 2000.<sup>184</sup> His initial impression was the Academy was not as well connected to the Air Force as it should be.<sup>185</sup> He thought some personnel had spent too much of their careers at the Academy and were not in touch with the Air Force's current operational environment.<sup>186</sup> The Academy had been through some recent controversies over ethical issues, as well as an outside review of the honor and character climate.<sup>187</sup> Lieutenant General Dallager found himself impressed by the quality of the cadet population, but not as much with the permanent party staff, particularly those that interfaced directly with cadets.<sup>188</sup> He advocated at the 2000 and 2002 CORONA summits to increase the selectivity of staff assigned to work at the Academy, with a particular emphasis on the qualifications of Air Officers Commanding (AOCs).<sup>189</sup>

Brigadier General Welsh was the Commandant for Lt Gen Oelstrom's last year as Superintendent and Lt Gen Dallager's first year, and his character development efforts occurred across both superintendents' terms. He assessed character development training and reduced the total number of training hours, focusing on the quality of the training rather than the quantity.<sup>190</sup> He changed sexual harassment training to have classes taught by faculty members, counselors, officers, or NCOs instead of cadets teaching cadets.<sup>191</sup> While Brig Gen Welsh was the Commandant, he met quarterly with Cadet Wing staff and each of the four Group staffs, keeping cadet lines of communication open.<sup>192</sup> Except for the November 15, 2000 Sexual Assault Services Committee meeting that Brig Gen Welsh chaired,<sup>193</sup> the Vice Commandant served as the Committee's chairperson and held meetings monthly or not less than every other month.<sup>194</sup>

<sup>182</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 18; Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2.

<sup>183</sup> Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 13, 19-20.

<sup>184</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 4.

<sup>185</sup> Statement of Lt Gen Dallager, Exhibit 71, at 4.

<sup>186</sup> *Id.* at 4-5.

<sup>187</sup> *Id.* at 6.

<sup>188</sup> *Id.* at 7.

<sup>189</sup> *Id.* at 17-19. This is a frustration cited by Superintendents and Commandants throughout the 1993-2003 period.

<sup>190</sup> The Director of the Center for Character Development from 1996 to 2002 noted that during his six years tenure the Superintendents and Commandants increased the amount of donor funds ("gift money") provided to the Center to enhance character development programs from about three or four thousand dollars in 1996 to two hundred and fifty to three hundred thousand dollars in 2002. Statement of Director of Center for Character Development (1996 to 2002), Exhibit 72, at 23.

<sup>191</sup> Statement of Brig Gen Welsh, Exhibit 64, at 17-18.

<sup>192</sup> Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 27.

<sup>193</sup> Sexual Assault Services Committee Meeting Minutes, Exhibit 73.

<sup>194</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 134, 136. The Victim Advocate Coordinator recalled the Sexual Assault Services Committee meeting monthly until a new Vice Commandant arrived in 2001 and switched to quarterly meetings. The change to a quarterly schedule is noted in the minutes for the March 7, 2001 meeting. Minutes of Sexual Assault Services Committee, March 7, 2001, Exhibit 74. While meetings were scheduled each month, some were later canceled. For example, the minutes from the meeting Brig Gen Welsh chaired in November 2000 said the December 2000 meeting was canceled. Minutes of Sexual Assault Services Committee, November 15, 2000, Exhibit 73.

The Headquarters AFOSI issue concerning sexual assault reporting and investigation continued after Lt Gen Dallager arrived. In late July 2000, the Academy received a compromise proposal that tried to balance both sides' interests. The proposal required disclosure to the Commandant of the victim's name and subject's name, which was counter to the program that made this information confidential.<sup>195</sup> In November 2000, Brig Gen Francis X. Taylor, Commander, Headquarters AFOSI, visited the Academy and met with Lt Gen Dallager to discuss the issue.<sup>196</sup> According to Brig Gen Taylor, they had an hour-long discussion and he thought both sides understood the other's concerns. He believed Lt Gen Dallager was receptive to finding a methodology that would satisfy AFOSI while assuring anonymity for the victim.<sup>197</sup> Brigadier General Taylor traveled to the Academy again in late April or early May 2001 and met with Brig Gen Welsh. According to Brig Gen Welsh, he and Brig Gen Taylor agreed that a form Brig Gen Welsh began developing in Fall 2000 would be provided to the Academy's AFOSI detachment so they could track sexual assault cases, but it would not include names.<sup>198</sup> This resolved AFOSI's concerns and led Brig Gen Taylor to conclude the Academy's program could be a model for the entire Air Force.<sup>199</sup> The Working Group found no indication that their agreement was implemented, and the tracking form continued to be one with little substantive information.

Brigadier General S. Taco Gilbert became Commandant in August 2001.<sup>200</sup> He set out to change the disciplinary climate at the Academy, trying to hold cadets more accountable for their actions, consistent with the "marching orders" he received from the Chief of Staff of the Air Force.<sup>201</sup> He said that with the exception of changing the standard for men's sideburns, he did not implement any new standards, but set out to enforce existing standards.<sup>202</sup> Among some of his initial steps was an effort to instill what he called "Big A" accountability, which he described as the Cadet Wing leadership taking responsibility for its members, rather than "little a" accountability, which he described as focusing responsibility on the individual cadet -- "Were you there? Were you late? What excuse do you have?"<sup>203</sup> He sought to address what he perceived as misplaced loyalty, that is, a cadet's primary loyalty was to his or her classmates rather than loyalty to values and the greater mission.<sup>204</sup> Brigadier General Gilbert instituted a uniform of the day policy, requiring all cadets to dress in the same type of uniform, to correct what he saw as lax enforcement of uniform standards.<sup>205</sup> Finally, he attempted to engage with the civil engineer to restore the

<sup>195</sup> Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 9-10; SAF/GCM Compromise Proposal, Exhibit 93.

<sup>196</sup> E-mail, Re: Academy, from Brig Gen Taylor, November 19, 2000, Exhibit 94.

<sup>197</sup> *Id.*

<sup>198</sup> Statement of Brig Gen Welsh, Exhibit 64, at 32-34. The forms the Counseling Center used required notification of the Academy's security forces squadron, but not AFOSI. See Sexual Assault Services Tracking Form, Exhibit 75.

Soon after making this agreement, Brig Gen Taylor retired (on July 1, 2001). Brigadier General Welsh relinquished command in August 2001. Statement of Brig Gen Welsh, Exhibit 64, at 4.

<sup>199</sup> Statement of Brig Gen Welsh, Exhibit 65, at 20, and E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

<sup>200</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 6-7.

<sup>201</sup> *Id.* at 41-42. See also statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

<sup>202</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 10-11.

<sup>203</sup> *Id.* at 11. Brigadier General Gilbert said he wanted the cadets to apply the same approach they would encounter in the Air Force where those in leadership positions are responsible for their subordinates. *Id.*

<sup>204</sup> *Id.* at 13-14.

<sup>205</sup> *Id.* at 15. Brigadier General Gilbert observed that cadets had been allowed to wear running suits in the dining hall, which devolved to gym shorts and then tank tops. He also noted that cadets were not correcting each other for not complying with uniform requirements. *Id.*

deteriorated physical conditions in the cadet dormitories and around the cadet area to provide a professional environment.<sup>206</sup>

Brigadier General Gilbert continued where Brig Gen Welsh left off in the refinement of the Academy's character development programs. When he arrived, there were character development seminars specifically targeted at First-Class cadets (seniors) and Second-Class cadets (juniors), as well as cadets in command positions.<sup>207</sup> He worked with the staff at the Center for Character Development in Spring 2002 to develop seminars for all four classes, which required creating a new seminar for Fourth-Class cadets (freshmen) and repositioning the other seminars among the three remaining classes. The result was every class had character development training every year especially tailored to meet the needs of that class.<sup>208</sup> Lieutenant General Dallager invited the Character Development Review Panel back to the Academy in Spring 2002 to discuss the implementation of the recommendations the Panel made in their 2000 report.<sup>209</sup>

Attention to the Sexual Assault Services Committee diminished. The frequency of the meetings declined and the minutes from the March 2001 meeting indicate the Committee switched to a quarterly meeting schedule.<sup>210</sup> A review of the minutes for calendar years 2001 and 2002 show three meetings in 2001 and two meetings in 2002.<sup>211</sup> During the thirty-three months that Lt Gen Dallager served as the Superintendent, there were four Vice Commandants who served as the Committee's chairperson<sup>212</sup> and three Chiefs of Sexual Assault Services.<sup>213</sup> USAFA Instruction 51-201 requires the Sexual Assault Services Committee to provide biannual reports on sexual assault issues to the Superintendent and other senior leaders.<sup>214</sup> The Working Group found no indication that written reports were ever furnished to a Superintendent. However, the Chief of Sexual Assault Services briefed Lt Gen Dallager on sexual assault issues, including the number of sexual assaults reported to the Cadet Counseling Center, on two occasions, once in April 2002 and again in November 2002.<sup>215</sup>

<sup>206</sup> *Id.* at 15. Brigadier General Gilbert said there were dead trees in the cadet area, holes in walls in the dormitories, and areas that needed painting. His initial effort to engage the civil engineer was not successful, but the civil engineer who arrived in 2002 was much more responsive. *Id.* The Vice Commandant at the time thought this was an important step, saying: "How do you tell a cadet to polish his brass and take care of his room, you know, to the Academy inspection standards when as soon as he walks out of that room there's a big hole in the wall? There's trash in the area. The trees in the Air Garden are dead." Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 102.

<sup>207</sup> Statement of Brig Gen Gilbert, Exhibit 10 at 21.

<sup>208</sup> *Id.* at 22.

<sup>209</sup> Statement of Lt Gen Dallager, Exhibit 71, at 52-53.

<sup>210</sup> See Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74.

<sup>211</sup> *Id.*; Sexual Assault Services Committee Meeting Minutes, October 5, 2001, Exhibit 77; Sexual Assault Services Committee Meeting Minutes, December 13, 2001, Exhibit 78; Sexual Assault Services Committee Meeting Minutes, February 21, 2002, Exhibit 79; and Sexual Assault Services Committee Meeting Minutes, May 2, 2002, Exhibit 80.

<sup>212</sup> Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10; Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70; Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74; and Sexual Assault Services Committee Meeting Minutes, January 31, 2003, Exhibit 81. Additionally, Brig Gen Welsh chaired the November 15, 2000 meeting. Sexual Assault Services Committee Meeting Minutes, November 15, 2000, Exhibit 73.

<sup>213</sup> Statement of the Chief of Sexual Assault Services from 1999 to 2001, Exhibit 82; Statement of the Chief of Sexual Assault Services (2001 to 2002), Exhibit 83; and Statement of the Chief of Sexual Assault Services (2002 to Present), Exhibit 20.

<sup>214</sup> USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

<sup>215</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; Statement of Chief of Sexual Assault Services (2002 to Present), Exhibit 20, at 3.

Some key features of the sexual assault response program were challenged during Brig Gen Gilbert's tenure as Commandant. Brigadier General Gilbert believed victim confidentiality through a counseling center that was not under the control of the command element undermined his ability to take action against offenders and provide support to the victims.<sup>216</sup> He made an effort to move the Cadet Counseling Center from the Department of Faculty to the Training Wing, but Lt Gen Dallager was concerned that placing it under the Commandant would raise questions about whether victim confidentiality could be maintained.<sup>217</sup> Additionally, the perception that some cadets were punished under the cadet disciplinary system for infractions revealed when they reported sexual assaults (e.g., underage drinking) caused at least some to question whether it was in a cadet's best interest to come forward.<sup>218</sup>

The Academy produced sexual assault information during Lt Gen Dallager's tenure. Cadet Social Climate Surveys, including questions pertaining to sexual assault, were administered in 2000, 2001 and 2002.<sup>219</sup> However, with the exception of a July 3, 2002 meeting in which Lt Gen Dallager specifically asked for survey data and was briefed on the 2002 results, the Academy's command was not apprised by Academy staff of the number of cadets who indicated in their survey responses that they had been sexually assaulted.<sup>220</sup> In the April and November 2002 briefings by the Chief of Sexual Assault Services referenced above, Lt Gen Dallager was provided information on the number of cadets reporting sexual assaults to the Cadet Counseling Center.<sup>221</sup> The slides presented at the April 2002 briefing showed twenty-three cadets had reported a sexual assault to the Cadet Counseling Center at that point in the 2001-2002 academic year compared with eight reports per year in academic years 1999-2000 and 2000-2001.<sup>222</sup> This significant increase was explained as a positive indicator that cadets were more likely to report sexual assault.

### ***B. The Academy's Definition of Sexual Assault***

The Academy uses a definition and explanation of "sexual assault" in its instructions and training materials that is inconsistent with Air Force practice (and law) and is susceptible to creating inaccurate perceptions, expectations, and even inaccurate reports of assault.

The definition was formalized in the 1997 publication of USAFA Instruction 51-201 and modified in the 2000 version of the Instruction. The Academy currently defines sexual assault as:

<sup>216</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 52-53.

<sup>217</sup> Statement of Lt Gen Dallager, Exhibit 71, at 141. According to the Commandant, the Dean of Faculty shared the Superintendent's concerns. Statement of Brig Gen Gilbert, Exhibit 10, at 54-55.

<sup>218</sup> Statement of Lt Gen Dallager, Exhibit 71, at 68-69; *see also* Statement of Victim Advocate Coordinator, Exhibit 50, at 118-119; Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 6.

<sup>219</sup> Statement of Director, Cadet Counseling Center, Exhibit 47, at 16.

<sup>220</sup> Statement of Director, Cadet Counseling Center, Exhibit 33, at 13-14. He said there were too few respondents in the 2000 survey and the answers on the sexual assault portion of the 2001 and 2002 surveys were incongruent (e.g., male respondents indicating they were assaulted by vaginal penetration or respondents that answered yes to the question but then said the number of occurrences was zero), so he deemed the data invalid. He said senior leadership was not provided the data with the exception of the 2002 data provided to Lt Gen Dallager during the July 3, 2002 meeting. *Id.* *See also*, statement of Counseling Center Director, Exhibit 47, at 16-18. But *see* this Report, Section VI.D., regarding the Dean of Faculty.

<sup>221</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; Statement of Chief of Sexual Assault Services (2002 to Present), Exhibit 20, at 3.

<sup>222</sup> Briefing Slides, Sexual Assault Services, Exhibit 85.

[T]he unlawful touching of another in a sexual manner, including attempts, in order to arouse, appeal to, or gratify the lust or sexual desires of the accused, the victim or both, and which is without justification, excuse, or consent. Sexual assault includes, but is not limited to rape, sodomy, fondling, unwanted touching of a sexual nature, and indecent sexual acts that the victim does not consent to, or is explicitly or implicitly forced into. Consent is not given where there is force, threat of force, coercion, or when the person is alcohol impaired, underage, or unconscious. It is immaterial whether the touching is directly upon the body of another or is committed through the person's clothing.<sup>223</sup>

This definition is then interpreted broadly in the Academy's training materials.<sup>224</sup>

Under military law, specifically the Uniform Code of Military Justice (UCMJ), while there is no specific offense of "sexual assault" the UCMJ does define a family of crimes that would normally be considered acts of sexual assault, among them: Rape (Article 120), Sodomy By Force and Without Consent (Article 125), Indecent Assault (Article 134), Assault with Intent to Commit Rape or Sodomy (Article 134), Carnal Knowledge (Article 120) and Indecent Acts or Liberties with a Child (Article 134).<sup>225</sup> In formulating the Academy definition, various elements of proof necessary to establish these individual offenses appear to have been combined, but that amalgamation has misleading aspects.

The area of greatest confusion in the Academy definition relates to the issue of consent. Even though the Academy's definition of sexual assault addresses consent, the explanation is, in part, inconsistent with law, and misleading. This problem can be shown through an examination of the offense of rape under the UCMJ. The elements that must be proven for rape are:

- 1) That the accused committed an act of sexual intercourse; and
- 2) That the act was done by force and without the victim's consent.<sup>226</sup>

Rape can be "committed on a victim of any age [and] any penetration, however slight is sufficient to complete the offense."<sup>227</sup>

At first glance, the Academy's definition requiring that a sexual assault be accomplished "without...consent" appears consistent with the UCMJ requirement for proof of *lack* of consent for rape. However, the Academy's definition broadly asserts "[c]onsent is not given where there is force, threat of force, coercion, or when the person is alcohol impaired, underage, or unconscious."<sup>228</sup> This misstates the law, as alcohol impairment short of intoxication sufficient to render a person incapable of consent will not, alone, negate consent (see below).<sup>229</sup> To the extent that the definition implies that having consumed alcohol and being impaired to any degree negates

<sup>223</sup> USAFA Instruction 51-201, at ¶ 2.2, Exhibit 55. The USAFA Instruction cited is the 2000 Instruction. The previous 1997 Instruction did not include "alcohol impaired" in the litany of factors that obviates consent. See USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, ¶ 2.2. (July 15, 1997) Exhibit 86.

<sup>224</sup> See this Report, Section III.C., Prevention and Awareness Training.

<sup>225</sup> There are other sexual misconduct offenses as well. See generally Overview of the Treatment of Sexual Offenses Under the UCMJ, March 2002, Exhibit 87.

<sup>226</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 45 (2002) [hereinafter MCM]

<sup>227</sup> *Id.*

<sup>228</sup> USAFA Instruction 51-201, at ¶ 2.2, Exhibit 55 [emphasis added].

<sup>229</sup> See *U.S. v. Tollinchi*, 54 M.J. 80 (CAAF 2000).

consent, it is significantly misleading to cadets, and likely to result in allegations of sexual assault under circumstances that would not meet criminal requirements.

Further, under the UCMJ, proof of lack of consent is required to establish the first two offenses listed above (rape and forcible sodomy) and requires more than showing a "mere lack of acquiescence." If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent.<sup>230</sup> In evaluating whether there was a lack of consent, a judge or jury will consider the "totality of the circumstances, including the level of resistance."<sup>231</sup>

(However, the law does not infer consent if "resistance would have been futile, where resistance is overcome by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties."<sup>232</sup> In such a situation, the law will not infer consent and the force involved in the actual penetration shall suffice for the force needed to prove the offense.<sup>233</sup> In addition, lack of consent may be found in some circumstances where coercion or fear has induced compliance, which is referred to in the law as constructive force.<sup>234</sup> Further, military case law does "not construe passive acquiescence of an insensate, or sleeping woman, as consent...."<sup>235</sup> Evidence of loss of consciousness due to alcohol and medications is sufficient to support the conviction of rape.<sup>236</sup> Thus, if a person is so inebriated as to be unable to consent, or drunk to the point of unconsciousness, sexual intercourse under those circumstances may be considered rape.)<sup>237</sup>

The issue of consent is complicated in situations that call into question whether there was an affirmative defense of "mistake of fact" available to the alleged assailant.<sup>238</sup> Typically, the issue of mistake of fact is encountered in those situations where the accused asserts that the actions, or the

<sup>230</sup> MCM, pt. IV, ¶ 45(c)(1)(b) (2002). See also MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 916(j)(1) (2002) [hereinafter R.C.M.].

<sup>231</sup> *U.S. v. Williamson*, 24 M.J. 32 (CMA LEXIS 257) (April 10, 1987) citing *U.S. v. Henderson*, 4 U.S.C.M.A. 268, 273, 15 C.M.R. 268, 273 (1954).

<sup>232</sup> MCM, pt. IV, ¶ 45(c)(1)(b) (2002).

<sup>233</sup> *Id.*

<sup>234</sup> *U.S. v. Simpson*, 55 M.J. 674 at 687 (A.C.C.A. 2001). The *Simpson* Court opined that the concept of constructive force was "recognized as applicable in the military crime of rape." *Id.* The *Simpson* Court noted that the concept of constructive rape had always included those instances involving a victim who was incapable of giving consent because of physical or mental infirmities and could also include situations involving express or implied threats of bodily harm. *Id.* The *Simpson* Court opined that other instances involving constructive force were further refined to include the "moral, psychological, or intellectual force a parent exercises over a child . . . ." *Id.* citing *U.S. v. Palmer*, 33 M.J.7, 9-10 (C.M.A. 1991).

<sup>235</sup> *U.S. v. Briggs*, 46 M.J. 699 (AFCCA 1996). The *Briggs* Court opined, "[w]hen a victim is incapable of consenting because she is asleep, no greater force is required than that necessary to achieve penetration." *Id.*

<sup>236</sup> *U.S. v. Carver*, 12 M.J.581 (AFCMR 1981).

<sup>237</sup> *E.g. U.S. v. Mathai*, 34 M.J. 33 (C.M.A. 1992).

<sup>238</sup> Mistake of fact is an affirmative, or special defense that if found to be true, would result in the accused not being guilty of the offense although he or she committed the objective acts of the offense charged. R.C.M. 916(j)(1). See also *U.S. v. Willis*, 41 M.J.435 (CAAF 1995) in which it was noted that the "honest and reasonable mistake on part of a service member as to the consent of a female is a valid defense to a charge of rape . . . ." See also *U.S. v. Simpson*, 55 M.J. 674 (ACCA 2001) in which the court opined that it "must also be satisfied beyond a reasonable doubt that the [accused] did not entertain an honest and reasonable mistake as to [the victims'] consent (sic)." *Id.* at 22. The *Simpson* Court also noted that "[e]vidence of force and the level of the victim's resistance are particularly relevant in determining the reasonableness of any mistaken belief the [accused] may have entertained. *Id.* at 22, citing *U.S. v. Pierce*, 40 M.J. 601, 605 (A.F.C.M.R.1994).

lack of action, by the victim caused him to believe that the victim was a willing participant in the act of sexual intercourse. To establish mistake of fact, the accused need only show that the mistake of fact existed in his mind and this mistake of fact was reasonable under all the circumstances surrounding the incident.<sup>239</sup> When an accused raises the affirmative defense of mistake of fact, the prosecution has the burden of proving beyond a reasonable doubt that the defense of mistake of fact did *not* exist.<sup>240</sup> To the extent that the Academy definition does not make clear that under many circumstances there is a need to *manifest* the lack of consent, it is misleading and may contribute to the very circumstances that could raise a mistake of fact defense.

The offense of Indecent Assault is the broadest of the offenses listed above that could constitute sexual assault. However, even this offense is not as broad as the Academy definition of sexual assault may imply. The elements that must be proven to convict an accused of Indecent Assault are:

- 1) That the accused assaulted a certain person not the spouse of the accused in a certain manner;
- 2) That the acts were done with the intent to gratify the lust or sexual desires of the accused; and
- 3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.<sup>241</sup>

In addition, for an act to constitute an assault, the act must be done without the lawful consent of the person affected.<sup>242</sup> Consequently, the concerns discussed above regarding consent may apply. In addition, not every act, even unwelcome ones with "romantic overtones," will demonstrate intent to gratify lust or sexual desires.<sup>243</sup> Further, to constitute an indecent assault, the act must be "to the prejudice of good order and discipline" or "of a nature to bring discredit upon the armed forces." This refers only to acts directly prejudicial to good order and discipline. To "Discredit" means that which tends to "injure the reputation of" the service, bring the service into disrepute, or lower it in public esteem.<sup>244</sup> Consequently, some acts that could technically meet the criteria of the first two elements may not rise to a level of criminality and would not result in charges under this statute.

The introduction of the reference to "indecent acts" introduces an additional problematic aspect, because, to constitute an "indecent act" a distinct crime under Article 134, of the UCMJ, the act must be of that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations,<sup>245</sup> a level of behavior (and an offense) not explained in the Academy's definition.

Finally, there appears to be a certain blurring effect in the Academy definition occasioned by the blending of offenses and conduct (e.g., sexual assault includes, but is not limited to rape, sodomy, fondling, unwanted touching of a sexual nature), that allows for a somewhat subjective

<sup>239</sup> R.C.M. 916(j)(1).

<sup>240</sup> R.C.M. 916(b).

<sup>241</sup> MCM, pt. IV, § 63 (2002).

<sup>242</sup> MCM, pt. IV, § 54(c)(1)(a) (2002).

<sup>243</sup> See *U.S. v. Hoggard*, 43 M.J. 1 (CAAF 1995).

<sup>244</sup> MCM, pt. IV, § 60(c)(3) (2002).

<sup>245</sup> MCM, pt. IV, § 90(c) (2002) and *U.S. v. Hoggard*, 43 M.J. 1 (CAAF 1995).

determination of what constitutes "sexual assault." This subjectivity is exemplified particularly in the phrase, "unwanted touching of a sexual nature," language more analogous to a definition of sexual harassment than sexual assault.<sup>246</sup>

As discussed above, there are significant potential gaps between the definition of sexual assault used by the Academy, the requirements of proof under military law, and the potential factual determinations that a court may make. These gaps could create substantial differences between a cadet's expectations and the reality of the criminal processes. Further, when non-specific reports of "sexual assault" are made through the Academy's reporting system it is not feasible to ascertain what, and sometimes whether an, offense has been described.

### ***C. Prevention and Awareness Training***

Pursuant to Academy instructions, sexual assault prevention and awareness training is provided to cadets, faculty and staff by the Cadet Counseling Center, in consultation with both the Center for Character Development and the Sexual Assault Services Committee.<sup>247</sup> The training is extensive and has many noteworthy characteristics. It also has aspects that compound the problematic aspects of the Academy's definition of sexual assault and lacks a focus on character as a key aspect of deterrence of sexual assault, in addition to which there is an issue with the timing of the training.

#### **1. Training on the Definition of "Sexual Assault."**

As discussed above, the Academy's definition of "sexual assault" is inconsistent with Air Force practice (and the UCMJ) and is susceptible to creating inaccurate perceptions and expectations. These aspects are compounded by the Academy's sexual assault prevention and awareness training, which emphasizes a broad interpretation of the Academy's already broad definition.

Cadet trainees receive their first sexual assault awareness training during Basic Cadet Training (BCT). In an initial BCT briefing, cadets are taught that sexual assault is "any unwanted touching of a sexual nature that is done without a person's consent" to include rape, anal sex, fondling, oral sex and sexual abuse.<sup>248</sup> In a follow-on sexual assault awareness briefing during the second phase of BCT, cadets are provided the following definition of sexual assault (*italics added for benefit of discussion, below*):

- Any unwanted touching of a sexual nature that is done without a person's consent.
- Consent is NOT given when there is force, threat of force, coercion, or when the

<sup>246</sup> See the Air Force definition of sexual harassment, Air Force Instruction 36-2706, Attachment 1 ("...unwelcome...physical contact of a sexual nature...").

<sup>247</sup> USAFA Instruction 51-201, ¶ 2.12.1, Exhibit 55.

<sup>248</sup> Briefing Slides, First BCT Briefing, Exhibit 88, at slide 2. Under the Uniform Code of Military Justice there are separate and distinct crimes which collectively constitute sexual assault, they are not accurately described here. See this Report, Section III.B. See also Overview of the Treatment of Sexual Offenses Under the UCMJ, Exhibit 87.

person is *alcohol/drug impaired*, mentally handicapped, underage, asleep, or unconscious.

-Touching is any fondling, kissing, sodomy or penetration.<sup>249</sup>

In addition to the two BCT briefings, cadets receive a *Street Smarts* briefing during their first year at the Academy. The purpose of the *Street Smarts* is to provide common sense “dos” and “don’ts” and includes a discussion of consent in relation to alcohol. Specifically, the briefing provides:

- Anyone who has forced a sexual encounter on someone who has said ‘no’ is guilty of sexual assault or rape.
- “Yes” *should not be understood as consent if consent is not freely given.*
- After saying “no” repeatedly, your compliance is actually “exhausted temporary acquiescence” if you give in.
- Invalid consent — when intoxicated by drugs or alcohol.<sup>250</sup>

The issue of consent as expressed in the *Street Smarts* briefing does not equate to a legal definition of consent. As noted by the Academy legal advisor for CASIE and the Sexual Assault Services Committee, this confusion means that CASIE advocates may “falsely raise the expectations of the victim . . . when victims are told that an intoxicated victim can never consent to sex.”<sup>251</sup>

## 2. Timing of Training in Basic Cadet Training

At the onset of Basic Cadet Training, trainees are provided with a copy of *Wing Tips*, which advises trainees on a variety of matters to include the rules of engagement for their training. These rules include permissible and non-permissible actions, or training violations, that occur when a trainer assumes inappropriate authority over a trainee to include touching, verbal abuse, and sexual harassment.<sup>252</sup> In addition, *Wing Tips* provides basic trainees with a “Basic Cadet’s Bill of Rights.”<sup>253</sup>

The trainees also receive their first block of sexual assault awareness training on the third or fourth day of the first phase of Basic Cadet Training.<sup>254</sup> In addition to being briefed on the Academy’s definition of sexual assault (as discussed above), cadets are informed about the policy regarding cadet victim and witness assistance and notification procedures contained in USAFA Instruction 51-201, and how incidents of sexual assault are handled at the Academy, and contact

<sup>249</sup> Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 11. During this briefing, cadets are counseled on sexual integrity. Both male and female cadets are told to prevent and avoid sexual assault, “both men and women should take ‘NO’ to mean ‘NO.’” *Id.* at slide 12.

<sup>250</sup> Street Smarts Briefing (for females), Exhibit 90, at slide 16.

<sup>251</sup> Statement of Chief, Military Justice, Exhibit 91, at 6.

<sup>252</sup> *Wing Tips, Basic Cadet Training Guide*, Exhibit 96, at 2.

<sup>253</sup> The Basic Cadets’ Bill of Rights advises trainees of their rights to include, “as a Basic Cadet you are protected from . . . Cadre violating your ‘personal bubble’ (touching you) . . . [i]nappropriate requests (i.e. meet me at midnight alone in Jacks Valley for additional counseling) . . . [u]nwanted sexual advances.” See *Wing Tips, Basic Cadet Training Guide*, Exhibit 96, at 3.

<sup>254</sup> Statement of Chief, Sexual Assault Services, Exhibit 20, at 1; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE volunteer, Exhibit 19, at 1. See Overview of Education, Training and Outreach by USAFA Sexual Assault Services, Exhibit 415. See also Briefing slides, First BCT Briefing, Exhibit 88. This is a half-hour long briefing put on by members of the Sexual Assault Services Branch to a mixed gender audience.

information.<sup>255</sup> The briefing also includes practical advice on certain types of "risky" situations trainees should avoid.<sup>256</sup>

Basic cadet trainees receive a second sexual assault awareness briefing during their second three-week phase of Basic Cadet Training.<sup>257</sup> The briefing includes information about CASIE, CASIE volunteers, the CASIE Hotline, the Victim Advocate Program, Sexual Assault Services Committee, and the Sexual Assault Awareness program.<sup>258</sup> During this briefing, briefers counsel trainees on sexual integrity.<sup>259</sup> The briefing advises cadets that they should be honest regarding their wants and expectations, as well as the need to seek consent from their sexual partner.<sup>260</sup> Trainees are taught how to prevent and avoid sexual assault and that "both men and women should take 'NO' to mean 'NO'."<sup>261</sup>

The Academy has conscientiously pursued a sexual assault training program that advises potential victims, and those who would provide them interim support, on available victim support services and creates an understanding of the impact of sexual assault on the victim.<sup>262</sup> However, the main thrust of this "support first training" is aimed at the basic trainees and Fourth-Class cadets, who are considered to be at the most risk for victimization.<sup>263</sup> Unfortunately, those who are at the

<sup>255</sup> Briefing slides, First BCT Briefing, Exhibit 88; Statement of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Female Military Training Leader, Exhibit 31, at 2-3; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1. For a discussion regarding contact information and victim support services information, see this Report, Section III.G., Victim Support.

<sup>256</sup> The presenters warn cadet trainees to avoid certain situations by being alert to inappropriate comments or jokes, physical or sexual threats, unwanted sexual advances or requests, and invasion of personal privacy. Briefing slides, First BCT Briefing, Exhibit 88, at slide 5. Briefers advise trainees they should not "be afraid to speak up about things that aren't right . . . and, [to] look out for each other." *Id.* at slide 6. In addition, during a separate Hygiene briefing, female cadets are advised that sexual assaults can occur at the Academy and that alcohol is a "big problem" in such incidents. See Briefing slides, Hygiene Briefing [for the Gals of 2006], Exhibit 97, at slide 16. This presenter explains to the female cadets that they have a lower tolerance level of alcohol than the males due to their body size, thus they are susceptible to becoming intoxicated after consuming a lesser amount of alcohol. *Id.* During the briefing, cadets are told, "You are an adult now . . . [y]ou are in control . . . [y]ou have a choice . . . YOU HAVE A RESPONSIBILITY!!!" *Id.* at 9. The briefer discusses with the female cadets that "sex [is] an adult decision with PROS (feels good, 'adult' action) and CONS (STDs, Pregnancy, emotional impact) . . . [i]f you make a choice, you accept responsibility for choice/action . . . #1 Abstinence." *Id.*

<sup>257</sup> See generally statements of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Female Military Training Leader, Exhibit 31, at 2, 3; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1. See also USAFA Instruction 51-201, Exhibit 55. A member of the Sexual Assault Services Center gives this second briefing with the assistance of a volunteer from Cadets Advocating Sexual Integrity and Education (CASIE); however, the briefings are more gender oriented and the audience is broken out according to gender. Statement of Chief, Sexual Assault Services, Exhibit 20, 1-2.

<sup>258</sup> *Id.* at 1-2. See also, USAFA Instruction 51-201, Exhibit 55. Beginning in the Fall of 2003, this briefing will include skits. Statement of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Sexual Harassment Training Skits, Exhibit 98. The proposed skits include vignettes of possible coercive situations in which a First-Class cadet could place a fourth-class, the use of date rape drugs, and forced sex. See Sexual Harassment Training Skits, Exhibit 98.

<sup>259</sup> Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 11.

<sup>260</sup> *Id.* at slides 2-3.

<sup>261</sup> *Id.* at slide 12.

<sup>262</sup> See generally Statements of Chief, Sexual Assault Services, Exhibit 20, at 2; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1; CASIE Program Manager, Exhibit 99, at 4; Male First-Class cadet/CASIE Volunteer, Exhibit 100, at 1; and Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1. See also USAFA Instruction 51-201, Exhibit 55; Briefing Slides, First and Second BCT Briefing, Exhibit 88 and Exhibit 89; Street Smarts Briefings, Exhibit 102 and Exhibit 90; and Sexual Assault Awareness Briefing, Exhibit 103.

<sup>263</sup> See generally Statements of Chief, Sexual Assault Services, Exhibit 20, at 3; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1; CASIE Program Manager, Exhibit 99; and Male First-Class cadet/CASIE Volunteer, Exhibit 100. See also USAFA Instruction 51-201, Overview of Education, Training and Outreach by USAFA Sexual

most risk may not be comprehending the information they are provided. Interviews suggest that when the trainees receive this briefing it is one of the few quiet, rather peaceful moments they have in a very busy schedule and many fall asleep.<sup>264</sup> During BCT, cadets are inundated with information as to their new military life to include in-processing, policy and informational briefings, learning to march, formations, drills, customs and courtesies, and physical training.<sup>265</sup> Therefore, despite the importance of the information being provided, basic trainees are significantly at risk of being too tired to fully comprehend the information.

### 3. Additional Training for Fourth-Class cadets

After Basic Cadet Training, cadets receive their next block of sexual assault training when they receive an hour-long briefing called *Street Smarts*. This briefing is usually given in the Fall of their first academic year.<sup>266</sup> Female cadets receive their briefing from members of the Sexual Assault Services Division.<sup>267</sup> The briefers advise female cadets that sexual assault occurs at the Academy (a recent briefing indicated twelve reported allegations during the Fall 2002 semester and that eighty-eight percent of female victims knew their assailant).<sup>268</sup> The briefing gives cadets common sense tips on how to avoid potentially dangerous situations.<sup>269</sup> In addition, the female cadets are told that they have certain rights and an upperclassman cannot simply have them disenrolled from the Academy.<sup>270</sup>

Male cadets also receive a *Street Smarts* briefing, which differs from the briefing given to female cadets. During the briefing given to the male cadets the presenter creates victim empathy so that she can build on and increase the male cadets' awareness.<sup>271</sup> The male cadets are also provided

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Assault Services Exhibit 55; Briefing Slides, First and Second BCT Briefings, Exhibits 88 and 89; *Street Smarts* Briefings Exhibit 102 and Exhibit 90; Background Paper on USAFA Sexual Assault Services Program, Exhibit 104; and Sexual Assault Awareness Briefing, Exhibit 103.

<sup>264</sup> Statement of Female Military Training Leader, Exhibit 31, at 3; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1.

<sup>265</sup> Statement of Male Deputy Group Air Officer Commanding, Exhibit 105, at 2. For further discussion about Basic Cadet Training, see this Report, Section IV B., Cadet Authority.

<sup>266</sup> Statement of Chief, Sexual Assault Services, Exhibit 20, at 2; see generally *Street Smarts* Briefings, Exhibits 90 and 102. This year the female Fourth-Class cadets received their briefing in the late September time period. Due to a scheduling glitch with the Training Wing, the males did not receive the briefing until January 2003. Statement of Chief, Sexual Assault Services, Exhibit 20, at 2.

<sup>267</sup> Statement of Chief, Sexual Assault Services, Exhibit 20. The Chief of the Sexual Assault Services Division, the CASIE Program Manager, or a victim advocate, all of whom are female, give this briefing. *Id.*

<sup>268</sup> *Street Smarts* Briefings, Exhibit 90, at slide 2. Female cadets are advised that Fourth-Class cadets are at the greatest risk of victimization with more than 50% of the sexual assaults reported to the Cadet Counseling Center involving Fourth-Class cadet victims. *Id.* at slide 4. On the same slide, the briefing notes that fraternization is a big problem at the Academy. *Id.*

<sup>269</sup> See generally *Street Smarts* Briefing, Exhibit 90, at slides 5, 6, and 8. The common sense tips provided to cadets include advisements such as: stay with a group, always have a buddy, watch your drink, and don't go off with a group of males. *Id.* at slides 10, 13, and 14. The briefing teaches female cadets how to avoid being in a situation that could result in a sexual assault by applying a "person X situation prevention analysis." *Id.* at slide 19. Cadets are advised that some men believe improperly that to have sexual relations with a woman they need to get her drunk, or that some may believe that they can use alcohol to get someone to acquiesce to sex, known as "working out a yes," which the briefing advises is "in many cases illegal." *Id.* at slide 17.

<sup>270</sup> *Street Smarts* Briefing, Exhibit 102, at slide 9.

<sup>271</sup> Statement of Chief of Sexual Assault Services, Exhibit 20, at 2. Neither the Chief of the Sexual Assault Services Division, nor the CASIE Program Manager, both females, gives the briefing alone. *Id.* One of the male CASIE volunteers is the co-presenter. The reasoning behind the two-presenter concept is that the female officers believed they would not have credibility to discuss these issues with the young male students. *Id.*

the same common sense "dos" and "don'ts" given to the female cadets, to include issues involving alcohol and drugs.<sup>272</sup>

During their fourth-class (freshman) year, female cadets also attend a mandatory Women's Self Defense Course.<sup>273</sup> The course is based heavily on the unarmed combat class that all third class (sophomore) cadets must take; therefore, female cadets receive this training again when they are in their second class (junior) year.<sup>274</sup> The fourth-class females' self-defense course is offered/attended throughout the academic year, because to have an effective class, ten students are needed and this is difficult to achieve given scheduling conflicts.<sup>275</sup> Due to the small number of female cadets and the fact that female intercollegiate athletes attend the course only in their off-season, it becomes difficult to hold all courses during the Fall semester.<sup>276</sup> The Course Director believes that it would be more advantageous for the female Fourth-Class cadets to receive this training as early as possible; thereby providing at-risk women the essentials to protect themselves from any would be assailant.<sup>277</sup>

#### 4. Training for Upperclass Cadets.

Each April, cadets are required to attend a portion of the Sexual Assault Awareness Month activities.<sup>278</sup> These activities take place in conjunction with the fifth period of the day, which is devoted to the military training block of instruction, and specifically includes one of the panel discussions.<sup>279</sup> These activities serve as another means to accomplish sexual assault cadet professional military education as required by USAFA Instruction 51-201.<sup>280</sup> In addition to this training, upperclass cadets receive other instruction about sexual assault in the form of their Behavior Science 200 class block in the Spring of their third cadet year.<sup>281</sup> During this instruction

<sup>272</sup> See generally Street Smarts Briefing, Exhibit 102.

<sup>273</sup> Memorandum for Record, Interview with Self-Defense Coach, Exhibit 106, at 1.

<sup>274</sup> *Id.* In addition to training on hand-lapel attacks, rear attacks, bear hugs and hammerlocks, the cadets receive instruction on how to avoid rape, date rape, and are taught self-esteem. *Id.* In addition to the Woman's Self Defense Course, and the Unarmed Combat Course, all cadets are required to take Unarmed Combat II as Second-Class cadets.

*Id.*

<sup>275</sup> *Id.* at 1.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> Even though cadets are required to attend, many do not. Statement of Former Chief, Sexual Assault Services, Exhibit 83, at 3.

<sup>279</sup> Statement of Former Chief, Sexual Assault Services, Exhibit 20, at 1. The focus of the panel discussions is based on a cadet's year group: Fourth-Class cadets focus on awareness; Third-Class cadets focus on prevention; Second-Class cadets focus on assistance; and First-Class cadets focus on "professionalism." During the 2002 activities, depending on a cadet's year group, a cadet could attend a variety of panel discussions, such as: A Survivor's Panel, Drug-Facilitated Rape, a Friends and Family Panel, Sex & Communication, Offender Profiling, Child Abuse & Domestic Violence, and Air Force Policy on Sexual Assault.

<sup>280</sup> See generally statements of Chief, Sexual Assault Services, Exhibit 20, and CASIE Program Manager, Exhibit 99. This is done to fulfill the USAFA Instruction 51-201 requirement to raise the level of awareness of, and prepare cadets to be sensitive and knowledgeable about sexual assault. *Id.* The program includes panel discussions, motivational speakers, an art show, and an information booth. The program began as a one week program and grew into a month long program. See statement of Chief, Sexual Assault Services, Exhibit 20. In addition, there is a *Take Back the Night* celebration and an optional statistics briefing. *Id.* The briefing presents the number of sexual assault reports to the Cadet Counseling Center from 1985 to 2002. See generally Sexual Assault Awareness Month Schedule (April 2002), Exhibit 107.

<sup>281</sup> See generally Statements of Victim Advocate Coordinator, Exhibit 50, at 72-73; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1.

period, cadets view a presentation called the *Seattle Tape*, the purpose of which is to develop victim empathy among males for female sexual assault victims.<sup>282</sup>

In addition to formal presentations, cadets have access to a variety of information regarding sexual assault, by means of the CASIE volunteers.<sup>283</sup> Each Cadet Squadron has a CASIE volunteer who is a cadet whose duties include acting as a point of contact for victims, as well as educating their squadron about sexual assault deterrence issues.<sup>284</sup> Squadrons also receive information throughout the year during their meetings at the Charge of Quarters desk, including information about sexual assaults.<sup>285</sup>

Although not considered part of the sexual assault training, the Academy has Human Relations Education Officers (HREOs), who are cadets who act as human relations officers in their squadrons at the Cadet Group and Squadron levels.<sup>286</sup> A HREO's responsibilities consist of helping individuals resolve disagreements, much akin to acting as a mediator.<sup>287</sup> In addition, HREOs teach people to respect racial, ethnic and gender diversity, but their responsibilities do not include handling instances of sexual assault or sexual harassment.<sup>288</sup>

## 5. Training for Academy Staff and Leadership

Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) receive a briefing from the Sexual Assault Services Division during AOC/MTL school. The purpose of the briefing is to make them aware of CASIE, the history behind the program, the services available to victims, notification procedures, and the number of reports made to the Cadet Counseling Center.<sup>289</sup> The Cadet Counseling Center gives the faculty an orientation briefing, during which they receive information on how to identify cadet distress, the USAFA Instruction 51-201 policy, and how to interact with victims of sexual assault.<sup>290</sup>

<sup>282</sup> Statement of Chief, Sexual Assault Services Division, Exhibit 20. The *Seattle Tape* is the taped presentation of a Seattle police officer to other police officers. The presenter describes the seemingly innocuous event of a patrolman getting out of his police car to move a trash can that had rolled into an alley. As he is bent over the trash can two individuals attack him and take his gun away from him. The police officer is then forced to perform fellatio on one of the individuals and is anally sodomized by the other. The presenter then discusses the emotional challenges the police officer/victim encounters when he has to discuss the matter with investigating law enforcement, medical personnel, family, friends, and coworkers. Memorandum for Record, *Seattle Tape*, Exhibit 108.

<sup>283</sup> See generally Statements of Chief, Sexual Assault Services, Exhibit 20, at 2; CASIE Program Manager, Exhibit 99, at 2, 4; Female First-Class cadet/CASIE Volunteer, Exhibit 19; and Female Second-Class cadet/CASIE Volunteer, Exhibit 109, at 3-4.

<sup>284</sup> USAFA Instruction 51-201, Exhibit 55. See also Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1, Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2, and CASIE Program Manager, Exhibit 99, at 2.

<sup>285</sup> Statement of Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2.

<sup>286</sup> Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 3. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111.

<sup>287</sup> Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111.

<sup>288</sup> Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 3. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111. HREOs are taught to refer instances of assault or harassment to the Inspector General's office or other appropriate channels such as CASIE. *Id.*

<sup>289</sup> See Briefing Slides, USAFA Sexual Assault Services, Exhibit 112. Similar information is briefed during Sexual Assault Awareness Month (SAAM).

<sup>290</sup> See generally Briefing Slides, Cadet Counseling Center, Exhibit 113.

## 6. Sexual Harassment Training

The Center for Character Development, offers sexual harassment education to all Fourth-Class cadets, as well as to basic trainees.<sup>291</sup> The sexual harassment training conducted during Basic Cadet Training is performed by active duty personnel who are trained to the Department of Defense Equal Opportunity standard.<sup>292</sup> Basic trainees are given a two-hour overview of the Department of Defense's sexual harassment policy, what constitutes sexual harassment, and the agencies that handle complaints of sexual harassment.<sup>293</sup> Fourth-Class cadets receive eight, fifty-minute Human Relations lessons that include professional conduct (examples of unprofessional relationships within the Cadet Wing), professional interaction and behavior, and resolving issues of sexual harassment.<sup>294</sup>

## 7. Other Related Training

We did identify other courses related to leadership and character in both the Department of Behavioral Sciences and Leadership (which includes the Cadet Counseling Center) and the Center for Character Development.

The Department of Behavioral Sciences & Leadership offers a mandatory, class to Fourth-Class cadets to acquaint the cadets with leadership, with the emphasis on how to be an assertive follower.<sup>295</sup> Currently, this is the only mandatory leadership class offered by the Department.<sup>296</sup>

In addition to the instruction provided by the Department of Behavioral Sciences, the Center for Character Development offers several programs related to character. However, their character courses are not a prerequisite for graduation.<sup>297</sup>

The Center for Character Development offers an annual character and leadership symposium.<sup>298</sup> Cadets are not required to attend the character and leadership symposium; however, if they do not attend, they are required to write a paper on one of the presenters' works.<sup>299</sup> The 10<sup>th</sup> Annual National Character & Leadership Symposium included sessions on *Ethics of Leadership*, *Leadership Ideas for Successful Character Development*, *Leadership from the Inside Out*, and *Come On! Be a Bud! On the Evils of Loyalty, Friendship, and Buddiness*.<sup>300</sup>

<sup>291</sup> See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

<sup>292</sup> See Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2.

<sup>293</sup> See Center for Character Development's Human Relations' Training/Education Plan for Basic Cadet Trainees, Exhibit 114.

<sup>294</sup> See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

<sup>295</sup> See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115; Briefing Slides, Department of Behavioral Sciences & Leadership, Exhibit 116, at 3.

<sup>296</sup> See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115. The course was reduced from 4.5 to 3.0 hours in 2002. *Id.*

<sup>297</sup> See Memorandum for Record, Interview with Deputy Director, Center for Character Development, Exhibit 117.

Cadets must complete specific core (non-elective) courses to be eligible for graduation. UNITED STATES AIR FORCE ACADEMY CATALOG, at 41-43 (2002-2003 ed.), Exhibit 6. None of the character courses are required for graduation.

*Id.*

<sup>298</sup> See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

<sup>299</sup> See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115.

<sup>300</sup> See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

The Center for Character Development offers Fourth-Class cadets a required three-hour interactive seminar that constitutes a military training requirement, which is referred to as *VECTOR*, Vital Effective Character Through Observation & Reflection.<sup>301</sup> *VECTOR* topics include examining the cadets' personal values, purpose, and the influences they have on others.

Second-Class cadets attend an "eight hour offsite, facilitated seminar [with] a focus on effective communication, interpersonal skills, teambuilding, integration of human relations, and their effects on leadership."<sup>302</sup> This seminar, known as *LIFT*, is "being prototyped to only a portion of the [Second-Class cadets], with the anticipation that all [S]econd [C]lass cadets will attend beginning in academic year 2003/2004."<sup>303</sup> *LIFT* includes experiential learning by means of team building exercises, the purpose of which is to "improve effective communication, interpersonal skills, positive motivation, trust, and team-leadership accountability."<sup>304</sup> During *LIFT*, cadets take a personality style assessment test.<sup>305</sup>

The Center for Character Development offers First-Class cadets instruction with a "[f]ocus on [o]rganization [e]xcellence" in the form of the Capstone Academy Character Enrichment Seminar (ACES), an eight-hour session facilitated by active duty members. The "[f]ocus is on doing the right thing, concentration on actual USAF member ethical dilemmas with some [discussion] of which involve sexual harassment or unprofessional relationships."<sup>306</sup> Attendees at Capstone ACES generally include Air Officers Commanding, Military Training Leaders, coaches, chaplains, staff, and "other personnel routinely involved with cadets."<sup>307</sup> Capstone ACES is offered throughout the Fall and Spring semester, allowing the cadet to attend that program which best fits into his, or her, schedule.<sup>308</sup> During Capstone ACES, First-Class cadets are given the Academy's definition of character, which is "[t]he sum of those qualities of moral excellence which stimulates a person to do the right thing which is manifested through right and proper actions despite internal or external pressures to the contrary."<sup>309</sup> Attendees learn that with the development of character comes certain outcomes to include "Officers with forthright integrity who voluntarily decide the right thing to do and do it."<sup>310</sup>

<sup>301</sup> See United States Air Force Academy Center for Character and Leadership Seminars and Workshops Paper, Exhibit 119. This is the first year the Center for Character Development has implemented this program, which was formerly Eagle ACES. *Id.*

<sup>302</sup> See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

<sup>303</sup> See United States Air Force Academy Center for Character and Leadership Seminars and Workshops Paper, Exhibit 119.

<sup>304</sup> See *id.*

<sup>305</sup> See *id.* The "assessment tool" is designed for "cadets [to] better understand others as they better understand themselves." *Id.*

<sup>306</sup> See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

<sup>307</sup> See Pamphlet, Capstones ACES, Exhibit 119. It should be noted that in August 2002, two special ACES were conducted for the entire AOC/MTL staff, using twenty case studies to include scenarios in which the AOC/MTL is concerned that one of the cadets has been sexually assaulted. See *ACES for AOC/MTL Scenarios*, Exhibit 119.

<sup>308</sup> See Pamphlet, Capstones ACES, Exhibit 119.

<sup>309</sup> See Brochure, *Academy Character Enrichment Seminar, The Character Capstone*, Exhibit 119, at 2.

<sup>310</sup> See Brochure, *Academy Character Enrichment Seminar, The Character Capstone*, Exhibit 119, at 3. Attendees are taught that "[o]fficers with forthright integrity voluntarily decide the right thing to do and do it in both their professional and private life . . . their inclination to do the right thing is consistently followed by actually doing what they believe they should do and taking responsibility for their choices." *Id.* In addition, attendees learn that "[o]fficers who respect human dignity believe that individual differences of race, gender, ethnicity, and religion are to be valued . . . [o]fficers who respect and value others act in ways which support and encourage others to develop to their fullest potential; they do not demean or debase others." *Id.*

The other "leadership" instruction that cadets receive is from the Military Strategic Studies Division, 34<sup>th</sup> Wing Education Group, in the form of the MSS100, MSS311 and M411 blocks (there are also the 311H and 411H blocks that are for the students in the honors program).<sup>311</sup> None of these courses are specifically designed to teach leadership; rather, they have embedded in them aspects of professionalism and ethics.<sup>312</sup>

## 8. Assessment

Our examination of the content of the Academy's sexual assault prevention and awareness training indicates that while extensive, there is little that addresses the moral, leadership, or character component of deterrence, *i.e.*, why one should not victimize others, or allow other cadets to engage in risk prone practices. As previously discussed, the Academy offers a number of sexual assault awareness and character briefings;<sup>313</sup> however, none of these briefings makes the actual connection that persons of character do not place themselves in certain situations, take advantage of others in what could become a compromising situation, or condone such behaviors in others. Specifically, there is no direct analysis in these briefings that persons of character do not sexually assault others, do not permit others to sexually assault another person, and they do not protect anyone who commits such an act.

### D. The Unique Reporting System

The Academy's program includes a unique, confidential reporting system for victims of sexual assault that differs from the process used in the rest of the Air Force.<sup>314</sup>

#### 1. The Air Force's reporting processes

There are primarily three means by which members of the Air Force who are not cadets can report incidents of sexual assault. They can:

- Report incidents to their chain of command.<sup>315</sup>

<sup>311</sup> See Memorandum for Record, Interview with Director of Institutional Technology, 34th Training Wing Education Group, Exhibit 120.

<sup>312</sup> See *id.* The Director of Institutional Technology indicated the courses were as follows: the MSS100 is "Military Theory and Aero/Space Power"; 311 is "Foundation of Aero/Space Power," and 411 is "Introduction to Joint and Multinational Operations." *Id.*

<sup>313</sup> The Academy defines "character" as the "[q]ualities of moral excellence which compel a person to do the right thing despite pressure or temptations to the contrary." Briefing Slides, Center for Character Development, History, Vision, Desired Outcomes, Developmental Plan, Organization, Programs & Challenges, Exhibit 121, at slide 5. The Academy's character program is focused on character as it relates to leadership and the thrust of the character courses is aimed at personal influence (competence, purpose, direction), interpersonal skills (shared vision, supportive climate), team building (risk taking, innovation, creativity), and organization excellence (transformation, unity of purpose). Although a few of the briefings offered at the non-mandatory National Character & Leadership Symposium discuss character in a moral context, they do not go the extra step and discuss character, morals and sex. See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

<sup>314</sup> A confidential hotline was established in 1993 for cadet reporting of sexual assaults. Statement of Lt Gen Hosmer, Superintendent (1991 to 1994), Exhibit 45, at 16-17. Subsequently, the confidential system was formalized in 1997 through the development of an Academy Instruction (USAF Instruction 51-201) in coordination with the Air Force Inspector General, the Air Force Judge Advocate General, the Air Force Office of Special Investigations, and the Air Force Surgeon General. Statement of Maj Gen Lorenz, Exhibit 52, at 33.

<sup>315</sup> Statements of CASIE Program Manager, Exhibit 99, at 3; Victim Advocate Coordinator, Exhibit 50, at 90.

- Report incidents to either Security Forces or the Air Force Office of Special Investigations.<sup>316</sup>
- Report incidents to a medical provider.<sup>317</sup>

These three means of reporting an offense would not be confidential and would result in an investigation. In the Air Force, there are other options available where a victim can confidentially discuss an assault and its surrounding circumstances, but those means would not be considered official reporting and would not result in an investigation. (For example, the victim could talk with an Air Force Chaplain.)<sup>318</sup>

The practical effect of the official reporting mechanisms available in the Air Force is that information included in those reports is available to the chain of command. Therefore, commanders have the ability to pursue the investigation of such criminal matters, handle resultant disciplinary actions, and provide for the care and support of victims.

(Pursuant to the Secretary and Chief of Staff of the Air Force's *Agenda for Change*, all allegations of sexual assault at the Academy will be reported to the officer chain of command.<sup>319</sup> Thus, Academy procedures will have the same effect as the procedures available to non-cadet Air Force members. In addition, the *Agenda for Change* calls for a "first responder" team to be notified so that elements of investigation, legal process and victim support may be coordinated.)

<sup>316</sup> Security Forces has authority for localized investigations of the sexual offenses of carnal knowledge, indecent exposure, sexual misconduct, and voyeurism on a case-by-case basis. Air Force Instruction 71-101 V1, at Attachment 2, Rule 25C. The AFOSI has the authority to investigate the sexual offenses of rape, sodomy, carnal knowledge, child molestation, or cases involving serious bodily harm. *Id.* at Attachment 2, Rule 25B. The applicable Air Force Instructions do not contain any provision for handling such information on a confidential basis. See Air Force Instruction 51-201, Administration of Military Justice; Air Force Instruction 31-206, Security Investigations Program, and Air Force Instruction 71-701 Vol. 1, Criminal Investigations. These instructions note that the release of information from any such investigation is subject to the Privacy Act; however, the Privacy Act should not be confused with the concept of confidentiality. Privacy Act of 1974, 10 U.S.C. § 8013. Confidentiality is a privileged communication in law — a communication between persons who have a special duty of fidelity and secrecy toward each other. Whereas confidentiality is a recognized privileged communication, privacy is freedom from unauthorized intrusion.

<sup>317</sup> Air Force Instruction 44-102, Community Health Management, § 2.36. Ordinary Air Force crime victims are entitled to care at military medical facilities. The fact that a victim may present for medical care would not necessarily be considered the reporting of a crime; however, medical personnel have an affirmative duty to report suspected criminal incidents to the AFOSI, to include the crimes of aggravated assault, rape, or other sex offenses as defined by the Uniform Code of Military Justice (UCMJ). Air Force Instruction 44-102, § 2.36. Thus, such a presentation would be tantamount to a *de facto* report. With the exception of a narrow patient-psychotherapist privilege, the Air Force does not provide for a doctor-patient privilege. See this Report, Section III.D.5., Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

<sup>318</sup> MCM, Mt. R. EVID. 503 (2002) provides that "[a] person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant if such communication is made either as a formal act of religion or as a matter of conscience." *Id.* However, the Chief of Chaplains advises all chaplains to encourage victims of sexual assault to report the incident and get the proper support. Comment from Chief of Chaplains, Working Group member. If a victim consults with an Area Defense Counsel, the attorney-client privilege would apply. "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation" unless certain exceptions are present. Air Force Rules of Professional Responsibility, Rule 1.6. Area Defense Counsel are certified by The Judge Advocate General. See Air Force Instruction 51-103, Designation and Certification of Judge Advocates, § 3. Area Defense Counsel enter into attorney-client relationships with persons who are suspected of, or are being investigated for a crime. For purposes of this discussion, if during the course of such an attorney-client relationship an individual told the Area Defense Counsel that he or she was the victim of a crime, the Area Defense Counsel could not disclose that information without the client's permission.

<sup>319</sup> *Agenda for Change*, Exhibit 4.

## 2. The Academy's reporting process.

[Note: Except where noted, the following describes the Academy procedures as they have existed prior to the implementation of the *Agenda for Change*, announced on March 25, 2003.]

Cadets have been able to avail themselves of all the same reporting systems that active duty Air Force members have used. Prior to implementation of the *Agenda for Change*, they could also use an Academy-specific reporting process that included limited confidentiality as provided under the auspices of the Cadet Counseling Center.<sup>320</sup> Under this unique process, a cadet could come forward to allege that a sexual assault had occurred without being required to provide detailed information upon which action could be taken. To a significant degree, the victim retained the option to remain anonymous and to refuse to make a formal report to AFOSI or the chain of command.<sup>321</sup> This could prevent command from having the ability to deal with offenders and result in the commissioning of such offenders as Air Force officers.<sup>322</sup>

Under the Academy Instruction, all USAFA staff and cadets receiving information about a sexual assault have an affirmative duty to notify the Cadet Counseling Center about the assault.<sup>323</sup> There is no requirement to provide the victim's name or any other identifying data. The report is to contain only as much information as the cadet victim is willing to provide after being briefed on the Cadet Counseling Center rules of confidentiality, and thus might not contain the identity of the victim or that of the assailant.<sup>324</sup> After receiving notice of a sexual assault, the Cadet Counseling Center is required to notify the Commandant (the Vice Commandant in accordance with the

<sup>320</sup> Sexual Assault Services Reporting and Notification Form, Exhibit 122; Briefing Slides, First BCT Briefing, Exhibit 88, at slide 7; Briefing Slides, Second BCT Briefing, Exhibit 89, at slides 6, 13, & 20. See also Statements of CASIE Program Manager, Exhibit 99, at 5, 6; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2; and Statement of Victim Advocate Coordinator, Exhibit 50, at 4; and see Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123.

<sup>321</sup> USAFA Instruction 51-201, at Section 2G, Exhibit 55. "In many cases, a victim is unwilling to report an assault to Academy officials, law enforcement, or command authorities. In these cases, the victim may choose to confide in a trusted person in an effort to solicit support and advice without invoking investigative or other official action. Consequently, the victim may ask the person he or she reports to not to disclose any information about the assault to anyone else." *Id.* at ¶ 2.8.1.2. "If the victim is willing to make a formal complaint (i.e., report the assault to law enforcement authorities), the person the cadet victim reported to should immediately notify AFOSI . . . [and] if the crime is recent, the 10<sup>th</sup> SFS [Security Forces Squadron] need to be called immediately to secure any potential crime scene." (Emphasis added.) *Id.* at ¶ 2.8.1.1. When calls are received on the Academy's Sexual Assault Hotline (see *infra*) the caller does not have to provide any specific information (such as the type of assault, where it occurred, when, number/identity of assailant) and is not required to give his or her name. In some instances the caller is assigned a name or initials so the victim can retain his or her anonymity while Sexual Assault Services is also able to track services provided to the individual. Statement of CASIE Program Manager, Exhibit 99, at 3. The Counseling Center Statement informs cadets that "[o]utside agencies/personnel only have access to information with a validated need-to-know. Except as noted above, release of personal information requires your signed authorization." Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123 (emphasis in original). See, *infra*, regarding exceptions.

<sup>322</sup> See Statement of Brig Gen Gilbert, Exhibit 10, at 52-53.

<sup>323</sup> USAFA Instruction 51-201, ¶ 2.8.1.2, Exhibit 55. The recipient of the information "should strongly encourage the cadet to seek immediate medical and support services from Academy agencies as needed (i.e. Cadet Clinic, Academy Hospital, Cadet Counseling and Leadership Development Center, chaplains, Life Skills Center) and encourage the victim to report the incident to law enforcement and/or command authorities as appropriate." *Id.* at 2.8.1.

<sup>324</sup> See Statements of CASIE Program Manager, Exhibit 99, at 3-4; Female Second-Class cadet, CASIE volunteer, Exhibit 109, at 2; and Statement of Victim Advocate Coordinator, Exhibit 50, at 63-64.

Academy's actual practice),<sup>325</sup> the 10<sup>th</sup> Security Forces Office of Investigations, and a victim advocate.<sup>326</sup> Absent the victim's consent, the Commandant (or Vice Commandant) and Security Forces are not provided names or identifying information.<sup>327</sup> The AOC will not be notified unless the victim so elects.<sup>328</sup>

The notice to Security Forces Office of Investigations is general in nature, lacking the individual's name or any other identifying data. USAFA Instruction 51-201 states, "10[th] SFS/SFOI [Security Forces Office of Investigations] is notified because they are responsible for monitoring and responding to trends related to sexual assault. Trend analyses usually do not require names or identifying information; therefore, only relevant information about the nature of the crime is reported to 10[th] SFS/SFOI [Security Forces Office of Investigations]."<sup>329</sup>

Reports of sexual assault can also be made through a system of cadet volunteers known as CASIE, including a Hotline operated by these volunteers.<sup>330</sup> When a Hotline call is received, the volunteer notifies an on-call victim advocate of the situation. In turn, the victim advocate is required to notify, by telephone, the Security Forces Office of Investigations and the Commandant (the Vice Commandant in accordance with the Academy's actual practice) without giving identifying information.<sup>331</sup> The information received in the CASIE system can also come from face-to-face exchanges between a CASIE volunteer and a victim, or disclosures made to a third party when the third party notifies the Cadet Counseling Center of the report.<sup>332</sup>

As soon as practicable, the information received about sexual assaults is given to the CASIE Program Manager who places the information onto a tracking form that is sent to the Commandant's office.<sup>333</sup> This tracking form has no identifying features regarding the victim.<sup>334</sup> Even though the delivery of the tracking form is supposed to follow the oral notification,<sup>335</sup> in actual practice there have been instances during which notification, both oral and written, occurred simultaneously.<sup>336</sup>

<sup>325</sup> USAFA Instruction 51-201, at ¶ 2.8.1.2.1, Exhibit 55. The instruction notes that "the Commandant is the commander responsible for both cadet victims and cadet perpetrators . . . [t]his General Officer must ensure the safety of each cadet and the good order and discipline of the entire Cadet Wing." *Id.*

<sup>326</sup> USAFA Instruction 51-201, at ¶¶ 2.8.1.2.2 and 2.8.1.2.3, Exhibit 55.

<sup>327</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 57.

<sup>328</sup> USAFA Instruction 51-201, at ¶ 2.8.1.2, Exhibit 55.

<sup>329</sup> USAFA Instruction 51-201, at ¶ 2.8.1.2.2, Exhibit 55. Despite the requirement, so little information has been provided to the Security Forces Squadron that development of any trend analyses has been rendered practically impossible. See Memorandum for Record, Group Interview with Security Forces Personnel, February 21, 2003, Exhibit 125, at 1. See also this Report, Section V.B., 10<sup>th</sup> Security Forces Squadron, for additional information on Security Forces responsibilities.

<sup>330</sup> The volunteers are part of Cadets Advocating Sexual Integrity and Education (CASIE), a support organization for cadet victims, operated primarily by cadets. For a complete discussion, see this Report, Section III G., Victim Support.

<sup>331</sup> Statement of CASIE Program Manager, Exhibit 99, at 3. The CASIE Intake Form lists the following three required actions: offer to assign the victim a victim advocate (if one is assigned that person is to be identified); notify the Commandant of the incident, and, notify the Security Forces Office of Investigations. See Sexual Assault Services Tracking Form, Exhibit 75. Statement of Victim Advocate Coordinator, Exhibit 50, at 57. USAFA Instruction 51-201, at ¶ 2.8.1.2, Exhibit 55.

<sup>332</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 53 and 90.

<sup>333</sup> Statement of CASIE Program Manager, Exhibit 99, at 3. But see the Victim Advocate Coordinator's Statement in which she states that she typically fills out the tracking form. Statement of Victim Advocate Coordinator, Exhibit 50, at 57.

<sup>334</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 63.

<sup>335</sup> Statement of CASIE Program Manager, Exhibit 99, at 3.

<sup>336</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 58.

The Cadet Counseling Center prepares the tracking form based on information provided by the person to whom the report was originally made (e.g., CASIE representative, Counseling Center Counselor, victim advocate, AOC, etc.). Thus, the quality of the information provided to command is dependent upon the person who gathered the information, the questions asked of the victim, and whatever information the victim is willing to provide.<sup>337</sup> As a result, the Vice Commandant, or Commandant, may have very little information to act upon.<sup>338</sup>

### 3. The Academy's confidentiality policy and command override.

Whether a cadet sexual assault victim contacts the Cadet Counseling Center via the CASIE Hotline or physically presents to the Cadet Counseling Center, the individual is made aware of the "Limited Confidentiality" policy of the Cadet Counseling Center.<sup>339</sup> According to the policy, the victim's desire to keep his or her name or details of the assault confidential may not be honored in all cases. Specifically, the Statement of Limited Confidentiality tells victims that the policy places limits on confidentiality in some circumstances, such as: if the report shows the victim may harm herself or others, if the victim reports child abuse which has not been previously reported, if there is evidence that the victim's behavior is putting his or her health or welfare at risk, and that relevant information may be released to investigative or judicial authorities if approved by the Superintendent ("override authority").<sup>340</sup>

As noted above, the last exception to confidentiality is known as the "override authority." USAFA Instruction 51-201 reflects this override authority,<sup>341</sup> which allows the Superintendent to authorize a breach of the limited confidentiality policy in certain circumstances. The Instruction states that after being notified of a sexual assault incident by the Cadet Counseling Center, the Commandant then advises the "Superintendent on the merits and limitations of authorizing an investigation."<sup>342</sup> This provision provides a mechanism by which Academy leadership could have access to otherwise confidential information. Although the tracking form was developed to ensure command received notification of all reported allegations of sexual assault, it was not designed to provide all the information that might be necessary for command to determine if an investigation was required. Prior to use of the form, information that a sexual assault occurred could have been provided to command verbally or not at all.<sup>343</sup> We found documentary information of two instances

<sup>337</sup> See Statements of CASIE Program Manager, Exhibit 99, at 3; and Female Second-Class cadet/CASIE Volunteer, Exhibit 109, at 2; and Statements of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 30; and Victim Advocate Coordinator, Exhibit 50, at 63, 66.

<sup>338</sup> Statement of Col Eskridge, Exhibit 124, at 27; Statement of Brig Gen Gilbert, Exhibit 10, at 52-53; Statement of Lt Gen Oelstrom, Exhibit 63, at 27-28 (screening of information is a weakness in the system); Statement of CASIE Program Manager, Exhibit 99, at 3 (victims are not required to provide information about the incident); Statement of Victim Advocate Coordinator, Exhibit 50, at 63.

<sup>339</sup> See Sexual Assault Services Reporting and Notification Form, Exhibit 122; Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 8; Statements of CASIE Program Manager, Exhibit 99, at 3; Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2. Victims who go to the Counseling Center are given a copy of the policy. See Statement of Victim Advocate Coordinator, Exhibit 50, at 13.

<sup>340</sup> Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123. The statement lists a total of nine examples of limits on the confidentiality offered by the Center.

<sup>341</sup> The command override authority was not part of the 1993 program. Statement of Lt Gen Hosmer, Superintendent (1991 to 1994), Exhibit 45, at 18-19.

<sup>342</sup> USAFA Instruction 51-201, at ¶ 2.8.1.2.1, Exhibit 55.

<sup>343</sup> Statement of Brig Gen Welsh, Exhibit 64, at 27-29. Brigadier General Welsh said the tracking form was a notification tool to ensure an incident "didn't fall through the cracks." In his view, it was a starting point and often led

when command issued an override of victim confidentiality.<sup>344</sup> Also, witnesses relate that the Superintendent has exercised this override provision on occasion.<sup>345</sup>

In some circumstances, the Vice Commandant may review the confidential information received and request additional details on the case from the Victim Advocate Coordinator to the extent that the victim will permit.<sup>346</sup> He or she may also have a victim advocate strongly encourage the victim to voluntarily make a formal complaint, based on concern for the safety of the Cadet Wing.<sup>347</sup> Otherwise, unless the Superintendent can determine that the need for an investigation outweighs the victim's interest in limited confidentiality, neither enforcement agencies nor leadership would be able to investigate the underlying crime, or for that matter, directly participate in support of the victim.<sup>348</sup>

As noted at the beginning of this section, command is not limited to receiving information solely through the confidentiality provisions administered by the Cadet Counseling Center. Command can receive information from individuals outside the confidential process to include Air Officers Commanding, other cadets, or even the victim.<sup>349</sup>

#### 4. Waiver of reporting requirement.

Air Force Instructions require medical personnel to report "incidents involving...aggravated assault, rape, [and] other sex offenses...to the Air Force Office of Special Investigations (AFOSI) or other authorities as appropriate."<sup>350</sup> Contrary to this requirement, the Academy Instruction on

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him to contact the Counseling Center or others to get additional information that would enable command to determine how to proceed. Statement of Brig Gen Welsh, Exhibit 65, at 12-13.

<sup>344</sup> Sexual Assault Services Tracking Sheets, Exhibit 301. One tracking form from academic year 2000/2001, signed by Brig Gen Welsh, and another from academic year 2001/2002, annotating override action by Lt Gen Dallager, were reviewed by the team. *Id.*

<sup>345</sup> See statements of Lt Gen Dallager, Exhibit 71, at 63-64; Vice Commandant (December 2002 to March 2003), Exhibit 124, at 31.

<sup>346</sup> Statement of Maj Gen Lorenz, Exhibit 52 at 38-39; Statement of Vice Commandant (December 2002 to March 2003), Exhibit 52, at 31.

<sup>347</sup> See Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 30; See also Statements of Maj Gen Lorenz, Exhibit 52, at 38-39; and Lt Gen Hosmer, Exhibit 45, at 19.

<sup>348</sup> See generally USAFA Instruction 51-201, at Section 2G, Exhibit 55. See Statement of Brig Gen Gilbert, Exhibit 10, at 52-53. See also Statement of Lt Gen Dallager, Exhibit 71, at 63, 73 ("...the current mechanism of feeding [information] into the command line does so either incompletely or not with enough specificity that the command line has a reasonable view of what's happened... enough detail to make a reasoned judgment on whether...to pursue an investigation..." But see Statement of Brig Gen Welsh, Exhibit 64, at 32 (in which he states the he believed the information provided was sufficient to make the initial decision whether or not to override victim confidentiality). See also statement of Victim Advocate Coordinator, Exhibit 50, at 64 (indicating that in every rape case the victim has wanted to go forward and that she would force the issue if necessary). In addition, neither Brig Gen Welsh nor Brig Gen Gilbert recall receiving general trend information from the Counseling Center, leaving them unaware of the larger sexual assault picture, as well as individual cases. See Statements of Brig Gen Gilbert, Exhibit 10, at 52-53; and Brig Gen Welsh, Exhibit 64, at 36, 37. But see Statement of Maj Gen Lorenz, Exhibit 52, at 31-32, in which he states that he received trending information and believed the process worked well.

<sup>349</sup> The victim controls who he or she tells about the incident and is not precluded from notifying command. See Statement of Commander, 34th Training Group, Exhibit 23, at 51-52; Statement of Female Military Training Leader, Exhibit 128, at 10; Statement of Male Squadron Air Officer Commanding, Exhibit 35, at 6. USAFA Instruction 51-201, Exhibit 55, does not prohibit these individuals from providing information to command outside the confidential process. (But see USAFA Instruction 51-201, ¶ 2.8.1.4, providing that, when AOCs report sexual assault incidents to their chain of command, names and identifying information will be reported only with the victim's permission.)

<sup>350</sup> Air Force Instruction 44-102, Community Health Management, ¶ 2.36. (November 17, 1999). This Instruction applies to all personnel assigned to or working in Air Force medical treatment facilities and aeromedical evacuation

Cadet Victim/Witness Assistance states that "[m]edical personnel in the Academy's [Counseling Center], Cadet Clinic, Emergency Room, and Life Skills Center are waived from reporting all cases of suspected rape or sexual assault against cadet victims directly to the Office of Special Investigations (OSI) as specified in Air Force Instruction 44-102, Chapter 1, Section U, Paragraph 1.52.1."<sup>351</sup> Instead, medical personnel will report all cases of suspected sexual assault against cadet victims concurrently to [the Cadet Counseling Center] and to the Commandant of Cadets. The Commandant is not provided the identity of the victim or the assailant, unless the victim consents.<sup>352</sup>

The deviation from the requirement that medical providers notify AFOSI of incidents of sexual assault was accomplished in reliance on a letter from the Air Force Surgeon General dated May 9, 1997.<sup>353</sup> (It appears the basis for seeking this waiver was the Academy's determination that victims of sexual assault would be more willing to seek support services if they could do so in a confidential manner.)<sup>354</sup> The waiver explicitly indicated that it was granted on a temporary basis and was "subject to review in one year."<sup>355</sup> The Working Group found no subsequent waiver or review of the waiver. The need for a subsequent waiver arises from an Air Force Instruction that requires that a new waiver be obtained when the underlying Instruction is subsequently revised.<sup>356</sup> The Instruction that the Air Force Surgeon General waived in May 1997 was revised July 1, 1998 and again in November 1999.<sup>357</sup> Since no waiver was issued other than in 1997, the Academy had no authority to disregard the reporting requirement found in Air Force Instruction 44-102, and thus no basis for medical personnel to not advise AFOSI in each instance.<sup>358</sup>

The Working Group found that the Academy's continued reliance on an invalid waiver does not provide a basis for deviating from the mandatory requirement to notify AFOSI as set forth in Air Force Instruction 44-102. Similarly, accreditation requirements (which permit disclosures

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units including Reserve and Guard personnel during their active duty periods, civilian, contract, volunteer personnel and trainees. *Id.* at 1.

<sup>351</sup> Due to the update to the Instruction, this paragraph was changed from ¶ 1.52.1 to ¶ 2.36, but the content remained the same.

<sup>352</sup> USAFA Instruction 51-201, ¶ 2.8.1.3, Exhibit 55. The Instruction also states that "[t]he person the victim is confiding in should advise him or her that [the Counseling Center] is not required to place a report of the counseling session in the cadet's permanent medical record." *Id.* at ¶ 2.3.2.

<sup>353</sup> Letter, Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997, Exhibit 129.

<sup>354</sup> See generally statement of Lt Gen Hosmer, Exhibit 45, at 17.

<sup>355</sup> Letter, Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997, Exhibit 129.

<sup>356</sup> Air Force Instruction 33-360V1, Publications Management Program, Section 3G, ¶ 3.47. The Instruction provides for a waiver of a requirement in a higher headquarters' publication if compliance with the requirement is "impractical due to unique local situations." *Id.* A waiver remains in effect until the approving official cancels the waiver, in writing, or revises the publication. *Id.* When the approving official revises the publication, the requester must renew the waiver. *Id.*

<sup>357</sup> See Air Force Instruction 44-102, November 17, 1999, which supersedes Air Force Instruction 44-102, July 1, 1998.

<sup>358</sup> In addition, the notification requirement does not run afoul of the Air Force's Psychotherapist-Patient Confidentiality set forth in Air Force Instruction 44-109, Mental Health, Confidentiality, and Military Law, that protects "[c]ommunications between a patient and a psychotherapist . . . for the purpose of facilitating diagnosis or treatment of a patient's mental or emotional condition [unless] . . . [a] federal law, state law, or service regulation imposes a duty to report information contained in a communication." Air Force Instruction 44-109, Mental Health, Confidentiality, and Military Law, ¶ 2 (March 1, 2000). In addition, there is no privilege when information is necessary to ensure the safety and security of military personnel, [or] military dependents. . . . *Id.* at ¶ 2.2.6. Information of a sexual offense is required to be reported by Air Force Instruction 44-102, and in certain instances when necessary to protect the security of other military personnel, therefore such information would not be privileged.

authorized by state law and federal guidelines and statutes) do not provide a basis for such deviation.<sup>359</sup>

(But see discussion, *infra*, regarding confidentiality for psychotherapists and application of Air Force Instruction 44-102 to the Cadet Counseling Center.)

##### 5. Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

Some sexual assault victims have expressed fears about what will happen if they report an assault.<sup>360</sup> Other cadets, Air Officers Commanding, Military Training Leaders, chaplains, and former graduates echo these fears.<sup>361</sup> The fear exists on many levels: fear of being punished by command; fear of having their friends punished by command; fear of being harassed or ostracized by other cadets; fear of having to remain in contact with the perpetrator who may be in the same squadron; fear that they will not be believed or supported by peers, by organizations, or by command; and fear of the impact on their reputation or status at the Academy or on their Air Force career.<sup>362</sup>

<sup>359</sup> Accreditation Standards for University and College Counseling Centers, at Section B, ¶ 4, Exhibit 130. Department of Defense Regulation (DoDR) 6025.18R, DoD Health Information Privacy Information, implementing The Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320a-8 (1996), became effective on April 14, 2003. DoD 6025-18R, DoD Health Information, Privacy Regulation, Exhibit 131. This regulation requires that Military Treatment Facilities establish standard operating procedures for uses and disclosures of certain patient information to include psychotherapy notes. *Id.* at Chapter 5 (C5). While this will affect certain Air Force medical facilities, it does not appear to apply to the Cadet Counseling Center. Memorandum for Record, Associate General Counsel, Re: DoD Health Information Privacy Regulation, April 29, 2003, Exhibit 132, at 1.

<sup>360</sup> Statement of Female Group Chaplain, Exhibit 32, at 2. See also footnotes, and accompanying text, below.

<sup>361</sup> See Statement of Female Military Training Leader, Exhibit 39, at 1, 3-4 (victims are fearful that they will receive "sex in the dorms" demerits); Statement of Male Squadron Air Officer Commanding, Exhibit 35, at 3 (cadets fear punishment if they report); Statement of Male Squadron Air Officer Commanding, Exhibit 36, at 3 (cadets who come forward suffer adverse affects after they report assaults); Statement of Female Group Chaplain, Exhibit 32, at 1-2; Statement of Male Military Training Leader, Exhibit 133, at 3; and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 4. See generally Memorandum for Record, Female First-Class cadet, Exhibit 134, at 1; Statement of Female Faculty Member, Exhibit 26, at 2 (one victim wanted to leave the Academy following assault after she saw how another victim had been treated); and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 135 (victim believed AFOSI did not believe incident took place). See also Statement of Victim Advocate Coordinator, Exhibit 50, at 113-114; Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (victim states the interview felt more like an interrogation and agents did not even offer her tissues or a glass of water); and Memorandum for Record, Interview with Victim Support Group, Exhibit 137, at 2 (Cadet Clinic and Emergency Room are not helpful; emergency room won't see a cadet victim if the cadet clinic is open and cadet clinic won't see patients without an appointment). While these statements may accurately portray a victim's perception, it is important to note that law enforcement agencies and prosecutors must, at times, press a victim for specific factual information to test the veracity of an allegation. In particular, questions relevant to determining a victim's lack of consent and exploring any potential mistake of fact defense can be quite uncomfortable for a victim. Yet, such questioning is essential to the development of an accurate factual account, apprehending a perpetrator, and successful prosecution of the alleged offense. AFOSI Manual 71-122, ¶ 2.3.3.4 specifically instructs agents to re-interview a victim to clarify inconsistencies when information is developed during an investigation indicating some or all of the victim's initial allegation may be inaccurate, misleading, or false.

<sup>362</sup> See generally Statement of female Military Training Leader, Exhibit 31, at 4 (cadets don't want to hurt their buddies); Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 2 (Victims ask questions about whether they or their friends are going to take a hit. Victims are more worried about their friends than themselves.); Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (victim knew if she went forward, her friends were going to be witnesses and might get in trouble for their condonation of other misconduct occurring); Statement of Female Chaplain, Exhibit 30, at 2-3. See Memorandum for Record, Interview with Third-Class cadet, Exhibit 57, at 1 (harassment victim believes if she had reported, the upperclassman harasser and his friends would have made her life worse during recognition); Statement of Female Military Training Leader, Exhibit 39, at 1; Memorandum for Record Interview with

The crime of sexual assault often causes the victim to feel powerless. Accordingly, a key aspect of the confidentiality provided in the Academy program was the goal of giving victims more control.<sup>363</sup> One means of giving victims more control that is incorporated in the Academy program is letting the victim decide what information will be reported to command and investigative authorities.<sup>364</sup>

Individual comments from cadets in the Superintendent's January 2003 Sexual Assault Services Survey also reflect that confidentiality is important. Some of the comments included:

"I think confidentiality might be an issue with cadets using CASIE. While it may be in place and respected, I would probably use an outside, anonymous source far from the Academy."

"My only concern is that if I were sexually assaulted, I would need to go to an outside agency for help so that the information did not go on my career records and hurt me. I do not trust the 'confidentiality' claim of [AF]OSI or other investigative organizations."

"...I have heard...the [sexual assault] program is reliable and genuinely sincere in anonymity [sic] and helping the victim, which is always most important."

"CASIE is fine because it is anonymous and there is no pressure to turn a case over to officials. But to go through the trauma and isolation caused by making an official claim would not be worthwhile."

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Victim Support Group, Exhibit 137, at 2 (victim support group members state that a victim who makes an accusation of sexual assault is ostracized); and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 100, at 2 (Some victims fear others will blame them or treat them differently). See Memorandum for Record, Interview with Female Second-Class cadet, Exhibit 139. Memorandum for Record, Interview with Victim Support Group, Exhibit 137, at 1 (some cadet victims indicated that a "blame-the-victim" mentality is prevalent at the Academy); Statement of Female Chaplain, Exhibit 30, at 2 (other women in the squadron will not support a victim; they think "you are making us all look not the same"); Statement of Female Faculty Member, Exhibit 26, at 4 (upperclass women perpetuate the problem by telling victims they should "suck it up" and not complain); Memorandum for Record, Interview with Admissions Advisor/Academy Graduate, Exhibit 140, at 1-2; Memorandum for Record, Interview with Female First-Class cadet, Exhibit 134, at 1, and Memorandum for Record, Interview with Female First-Class cadet/HREOs, Exhibit 111 (stating that First-Class cadet females are supportive of Fourth-Class cadet females). See generally Statement of Female Faculty Member, Exhibit 26, at 3; Statement of Male Military Training Leader, Exhibit 133, at 2; Statement of Female Military Training Leader, Exhibit 31, at 6 (leadership questions victim's honesty); Statement of Male First-Class cadet/CASIE, Exhibit 135, at 1 (when they get the AFOSI report, leadership shows concern for the cadet rule violations more than for the assault); and Statement of Male Squadron Air Officer Commanding, Exhibit 36, at 3; Statement of Female Military Training Leader, Exhibit 31, at 6 (lower-classmen would be afraid of being thought of as a snitch or someone who is a "kiss-ass" if they were to report a problem); Memorandum for Record, Interview with Female Second-Class cadet, Exhibit 138, at 1 (if you say anything, your reputation is ruined); Statement of Male First-Class cadet CASIE/Volunteer, Exhibit 101, at 4 (victims are worried about the consequences of reporting and might ask about impact on obtaining security clearances); and Memorandum for Record, Interview with Female Former Academy Cadet, Exhibit 141, at 3.

<sup>363</sup> Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 11, 127.

<sup>364</sup> See generally statement of Lt Gen Hosmer, Exhibit 45, at 29. One study asserts, "Any policy or procedure that compromises, or worse, eliminates the student victim's ability to make her or his own informed choices about proceeding through the reporting and adjudication process—such as mandatory reporting requirements that do not include an anonymous reporting option or require the victim to participate in the adjudication process if the report is filed—not only reduces reporting rates but may be counter productive to the victim's healing process." Karjane, Fisher and Cullen, "Campus Sexual Assault: How America's Institutions of Higher Education Respond," Exhibit 142, at Issue VI: ¶ 5.

"...I would be anxious in revealing the information if I were assaulted due to the lack of confidentiality I feel there is as well as how others would perceive the situation and how their negative opinions would reflect in [sic] my reputation."<sup>365</sup>

The essential challenge, then, is to balance the benefits of providing confidentiality for victims against command's interest in knowing of crimes (including the identities of victims and alleged assailants), and having full opportunity to respond to them. Under the *Agenda for Change*, as in the rest of the Air Force, certain provisions for confidentiality must be taken into account, and provide limited confidentiality to cadet victims, as they do for other Air Force members.

Although there is currently no doctor-patient privilege for military members, Air Force Instruction 44-109, *Mental Health, Confidentiality, and Military Law*, states that conversations between a patient and a psychotherapist for the purpose of diagnosis or treatment of the patient's mental or emotional condition are considered confidential communications, but will be disclosed to persons or agencies (1) with a proper and legitimate need for the information and (2) who are authorized by law or regulation to receive it.<sup>366</sup> As discussed above, Air Force Instruction 44-102 provides such authority by requiring all personnel assigned to or working in an Air Force medical treatment facility to report incidents involving aggravated assault, rape, other sex offenses, and certain other crimes. This provision clearly applies to at least all Academy medical facilities, and although not literally applicable to the Cadet Counseling Center, it appears to have been interpreted in the past by the Air Force Surgeon General, who is responsible for Air Force Instruction 44-102, as applying also to the Cadet Counseling Center.<sup>367</sup>

Alternatively, the *Agenda for Change* provides an exception for reports of crimes of sexual assault, although clarification of Air Force Instruction 44-102 to that effect would be desirable. Air Force Instruction 44-109 also incorporates a limited psychotherapist-patient privilege for matters under the Uniform Code of Military Justice (UCMJ).<sup>368</sup> Under Military Rule of Evidence 513, which was enacted in 1999, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist (or assistant) for the purpose of diagnosis or treatment of the patient's mental or

<sup>365</sup> Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 1, 11, 21, 25, 45.

<sup>366</sup> Air Force Instruction 44-109, ¶ 2.1. A "psychotherapist" is defined as a psychiatrist, clinical psychologist, or clinical social worker or other privileged provider who is licensed in any state, territory, possession, the District of Columbia, or Puerto Rico to perform services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials. Air Force Instruction 44-109, Attachment 1.

<sup>367</sup> Air Force Instruction 44-102, ¶ 2.36. The other incidents that are required to be reported are suspected child abuse, spousal abuse, homicides, suicides, attempted suicide, robbery, intentional prescription overdose, and narcotics overdose. *Id.* at ¶ 2.36. Literally, this requirement does not apply to the Academy's Cadet Counseling Center since the Center is not aligned under the Medical Group and is arguably not a medical treatment facility. See *id.* at preamble, which states that the Instruction applies only to personnel assigned to or working in Air Force Medical Treatment Facilities. However, the Academy has operated the Cadet Counseling Center as if it were subject to the Instruction and, in fact, the Cadet Counseling center provides treatment similar to that provided by Family Advocacy offices which are aligned within a Medical Group and are considered part of the medical treatment facility. See Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997 (indicating regard as a medical treatment facility); USAFA Instruction 51-201, ¶ 2.8.1.3, Exhibit 55 (stating that medical personnel at the Cadet Counseling Center are waived from complying with the reporting requirement in Air Force Instruction 44-102); Air Force Instruction 44-102 at preamble.

<sup>368</sup> Air Force Instruction 44-109, ¶ 2.2. See *U.S. v. Rodriguez*, 54 M.J. 156 (2000) and MCM, MIL. R. EVID. 513 (2002).

emotional condition, in cases arising under the UCMJ,<sup>369</sup> unless an exception applies.<sup>370</sup> One exception is when service regulation imposes a duty to report. Another permits release of information when necessary to ensure the safety and security of military personnel, military property, classified information or the accomplishment of the mission.<sup>371</sup> The net effect of these exceptions is that, although reports of crimes of sexual assault would not themselves be privileged, other communications falling within the psychotherapist privilege may remain so.

In addition to Military Rule of Evidence 513, there is also a limited privilege in the Air Force that protects information revealed in a clinical relationship with a mental health provider if the member has been notified that he or she is under investigation or is suspected of the commission of an offense and poses a risk of suicide. This is known as the Limited Privilege Suicide Prevention Program. In those instances, the communications made between the patient and the provider while the patient was considered a suicide risk cannot be used in an existing or future UCMJ action or when determining what type of discharge should be given in a discharge action.<sup>372</sup> However, the information can be used for other non-UCMJ and non-duty characterization purposes. Thus, command could potentially still obtain the information, but would be limited in its use.

#### 6. AFOSI authority to investigate.

Regardless of the Academy's confidentiality provisions, and the waiver issue discussed above, AFOSI retained authority to initiate investigations at its discretion. Department of Defense Instruction 5505.3, dated July 11, 1986, notes that "commanders of the military investigative organizations and their subordinate commanders shall be authorized to initiate criminal investigations [and] . . . shall not be required to solicit, nor shall they solicit from commanders outside the military criminal investigative organizations requests or authorizations to initiate investigations."<sup>373</sup> As a practical matter, however, the Academy process restricted the information flow to the AFOSI to make such determinations. However, it appears that the Commander, AFOSI, after consideration of the Academy's position in 2000, concurred in the process set forth in USAFA Instruction 51-201.<sup>374</sup>

#### *E. Amnesty for Infractions*

The Academy has applied an amnesty policy aimed at encouraging victims to report allegations of sexual assault. The policy recognizes that some cadet victims are unlikely to report offenses, particularly if the victim was engaged in some misconduct when the sexual assault took

<sup>369</sup> Communications are deemed "confidential" if they are not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of rendition of professional services. MCM, MIL. R. EVID. 513(b)(4) (2002). A "psychotherapist" is defined as a psychiatrist, clinical psychologist, or clinical social worker who is licensed in any state, territory, possession, the District of Columbia, or Puerto Rico to perform services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials. MCM, MIL. R. EVID. 513 (b) (2) (2002). Whether communications between a patient and a victim advocate or other Counseling Center staff would fall within this exception depends on whether the communication was for the purpose of diagnosis or treatment.

<sup>370</sup> MCM, MIL. R. EVID. 513(c) (2002).

<sup>371</sup> MCM, MIL. R. EVID. 513(c)(6) (2002).

<sup>372</sup> Air Force Instruction 44-109, ¶ 3.5.

<sup>373</sup> DoD Instruction 5505.3, Initiation of Investigations by Military Criminal Investigative Organizations (1986), ¶ 4.1, Exhibit 144. On June 21, 2002, this Instruction was reissued. The substance of ¶ 4.1. is now found at ¶ 6.1, Exhibit 145.

<sup>374</sup> E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

place. Under the amnesty policy, in effect with the 1993 program, a cadet victim could be excused for infractions committed at the time of the alleged assault; however, the rules and their application were not well defined or understood.

# 1. Rules on Amnesty.

Amnesty was an aspect of the informal program initiated by Lt Gen Bradley C. Hosmer in the program he developed in 1993.<sup>375</sup> In 1997, the concept of amnesty was formalized in USAFA Instruction 51-201.<sup>376</sup> The policy was initiated "to encourage cadets to report sexual assaults and to ensure they receive available medical and counseling services." Amnesty has been provided because sexual assaults often occur in conjunction with rules violations.<sup>377</sup>

The amnesty policy states that cadet victims will "generally not be disciplined" for self-identified violations of cadet instructions (such as pass violations, unauthorized alcohol consumption, or cadet fraternization) that may have occurred in connection with an assault. The policy is intended to be discretionary with command. AOCs are permitted to counsel cadets about such violations; however, the decision to sanction others who participated in related offenses is made on a case-by-case basis.<sup>378</sup> This policy has recently been a major point of contention and may be a factor in a cadet's decision to report sexual assault.

There is no exact data on how many victims have been provided amnesty since the implementation of the policy. The Victim Advocate Coordinator, who participated in the development and implementation of the policy, stated that since 1997 she has only been involved in two cases of requested amnesty.<sup>379</sup>

In March 2003, there were two changes to the policy.<sup>380</sup> The first change provided that no action will be taken under the cadet disciplinary system for cadets who allege they are victims of sexual assault until the allegations are thoroughly investigated by the appropriate agencies. The second change addressed amnesty in sexual assault cases that involve illegal consumption of alcohol, and stated that underage consumption and possession of alcohol is a crime and the sanctions for underage consumption of alcohol by any Academy cadet may result in disenrollment.<sup>381</sup> The amendments clarify the Commandant is responsible for making the amnesty

<sup>375</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 23-25.

<sup>376</sup> USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

<sup>377</sup> See Statement of Lt Gen Hosmer, Exhibit 45, at 23 (indicated typical case at that time might include drinking after hours in the dormitory, fraternization); Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 18 (described incident involving underage drinking and alleged sexual assault); Statement of Lt Gen Dallager, Exhibit 71, at 68-69 (stated that typically alcohol is involved); Statement of Victim Advocate Coordinator, Exhibit 50, at 102, 119 (alcohol involved in 80% of sexual assaults, which also involved fraternization and "Over the Fence"). See generally Statement of Former Vice Commandant, Exhibit 59, at 73-83.

<sup>378</sup> USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

<sup>379</sup> See Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

<sup>380</sup> See 34th Training Group Cadet Information File 03-10, Policy on Cadet Disciplinary Action Involving Sexual Assault, Sexual Harassment, or Rape, March 1, 2003 [hereinafter CIF 03-10] and 34th Training Group Cadet Information File 03-11, 34th Training Wing Policy On Alcohol, March 11, 2003 [hereinafter CIF 03-11], Exhibit 146.

<sup>381</sup> CIF 03-11, Exhibit 146. Prior to this CIF, underage drinking and possession of alcohol were often handled through the cadet disciplinary system, rather than through the UCMJ. See Trend Analysis of Discipline Data, March 26, 2003, Exhibit 147.

decision, a fact that is not stated in USAFA Instruction 51-201.<sup>382</sup> The amendments also present a timeline for when amnesty decisions will be made.

The *Agenda for Change* in March 2003 provided for additional and more sweeping changes: "In all reported cases of sexual assault, amnesty from Academy discipline arising in connection with the alleged offense will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets."<sup>383</sup>

## 2. Misunderstanding of the Amnesty Policy.

The Working Group found many individuals at the Academy do not understand the amnesty policy. Cadets, CASIE representatives, AOCs, and faculty members explained their understanding of the amnesty policy, revealing that there are various views including:<sup>384</sup> amnesty is provided for all cadet infractions related to a sexual assault;<sup>385</sup> amnesty is only given in limited circumstances;<sup>386</sup> amnesty is misused by some women who have broken a lot of rules, claiming they are assaulted when they really weren't so they can avail themselves of the amnesty policy;<sup>387</sup> and amnesty is rarely or never used.<sup>388</sup>

<sup>382</sup> See CIF 03-10 and CIF 03-11, Exhibit 146; USAFA Instruction 51-201, ¶ 2.8.3., Exhibit 55.

<sup>383</sup> See *Agenda for Change*, Exhibit 4.

<sup>384</sup> Statement of Female Second-Class cadet, Exhibit 109, at 3 (stating that to claim amnesty one must send a formal form requesting amnesty to the Commandant for approval. One can request amnesty for oneself or anyone else that was involved in the incident and that most of the time amnesty is granted.); Statement of Squadron Air Officer Commanding (AOC), Exhibit 34, at 8 (stating that he thinks that the Training Wing Commander grants amnesty); statement of Squadron AOC, Exhibit 127 (stating that before this controversy started he thought amnesty was that for anything a cadet did wrong, that cadet could not get in trouble if the cadet came forward. But also stating now he is not sure what it means); Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148, at 2 (stating she does not understand the amnesty portion of the counseling program. Although amnesty "may" be given, in her experience, it really isn't available. She believes amnesty only applies if the allegations are substantiated.); Statement of Male First-Class cadet, Exhibit 149, at 2 (stating that his understanding of the amnesty policy was if a female cadet and a male cadet were drinking when a sexual assault occurred, both cadets would receive a "hit" for drinking. His understanding of the new policy is that the female will no longer receive the "hit."); Statement of Group AOC, Exhibit 150, at 4 (he really doesn't know how the amnesty program works); Statement of Female First-Class cadet, Exhibit 151, at 2 (amnesty can be obtained if one goes to CASIE then it is set up to let the cadet report and not get in trouble for drinking or fraternizing); Statement of Male Fourth-Class cadet, Exhibit 38, at 3 (he thought he earlier understood the policy, but now didn't know exactly what amnesty was since the media coverage and everyone talking about it); Statement of Two First-Class Female Cadets, Exhibit 136, at 2 (they thought amnesty's primary objective is to put rapists behind bars, but they didn't know how it's being used in the cadet system). See Memorandum for Record, Interview with Cadet Wing Leadership, February 26, 2003, Exhibit 25; Memorandum for Record Group Interview with CASIE Reps, February 25, 2003, Exhibit 152; Memorandum for Record, Group Interview with Female Cadets, February 25, 2003, Exhibit 56; Memorandum for Record, Group Interview with Squadron AOCs, February 25, 2003, Exhibit 153; Memorandum for Record, Interview with Counseling Center Personnel, February 21, 2003, Exhibit 154; Memorandum for Record, Interview with Major, February 24, 2003, Exhibit 155.

<sup>385</sup> Statement of Female MTL, Exhibit 39, at 4; Statement of Squadron AOC, Exhibit 127, at 5.

<sup>386</sup> Statement of Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2; Statement of Male First-Class cadet, Exhibit 100, at 2; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1; Statement of Female First-Class cadet, Exhibit 151, at 2; Statement of Squadron Air Officer Commanding, Exhibit 36, at 5; see Memorandum for Record, Group Interview with Squadron AOCs, February 25, 2003, Exhibit 153.

<sup>387</sup> Statement of Group Air Officer Commanding, Exhibit 150, at 4; Statement of Chief of Military Justice, Academy Legal Office, Exhibit 91, at 6; Statement of Female Second-Class cadet, Exhibit 139; Statement of Area Defense

Leadership also had varying views over time of what the policy means and how it should be applied. One Commandant stated he was not involved in amnesty decisions and was not aware of anyone being involved in making amnesty decisions. He also stated that if his Vice Commandant had been involved in making amnesty decisions that would have "astound[ed]" him.<sup>389</sup> The current Commandant and Superintendent viewed the amnesty decision as that of the Vice Commandant, who is the person who sees the reports from CASIE.<sup>390</sup> They view the authority of amnesty as derived from the USAFA Instruction 51-201 and as a delegated authority by tradition and custom.<sup>391</sup> The Vice Commandant considers the grant of amnesty to be a matter of judgment on a case-by-case basis<sup>392</sup> and the amount of amnesty given can in some cases be fairly liberal, while more limited in other cases.<sup>393</sup> Even the Superintendent thought the amnesty policy was not very clear and thought the policy should be available for the alleged victim, as well as others participating or part of the incident.<sup>394</sup>

Interviews indicate that some victims who report a sexual assault to CASIE are made aware of the amnesty provision by the CASIE volunteer.<sup>395</sup> The CASIE volunteer will even apply for amnesty on behalf of the victim.<sup>396</sup> However, some CASIE volunteers who are not clear themselves on how the provisions work are providing amnesty information to victims.<sup>397</sup>

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Counsel, Exhibit 156, at 2; *See also* Memorandum for Record, Group Interview with Cadet Wing Leaders, February 26, 2003, Exhibit 25; Memorandum for Record, Interview with Brig Gen Gilbert, Exhibit 157.

<sup>388</sup> Statement of Female Military Training Leader, Exhibit 39, at 4; Memorandum for Record, Interview with Physics Department Instructor, Exhibit 158. *See* Statement of Male First-Class cadet, Exhibit 135, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 113; Memorandum for Record, Interview with Squadron Air Officer Commanding, Exhibit 159.

<sup>389</sup> Statement of Brig Gen Welsh, Exhibit 64, at 46-47.

<sup>390</sup> Statement of Lt Gen Dallager, Exhibit 71, at 67, 69; Statement of Brig Gen Gilbert, Exhibit 10, at 50-53 (Brig Gen Gilbert explained that the general perception is that the Commandant is in charge of the disciplinary system. But the Vice-Commandant, by design, was put into the situation to grant amnesty because the Vice Commandant would have both insight into what was happening on the discipline side and insight as to what was happening on the CASIE side. Brig Gen Gilbert expressed dissatisfaction with the reporting process that does not allow him to see all the information on a sexual assault report made through CASIE or the Counseling Center.

<sup>391</sup> Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 39-40. *See also* statement of Brig Gen Gilbert, Exhibit 10, at 50-51.

<sup>392</sup> *See* Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 42.

<sup>393</sup> Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 40; Statement of Brig Gen Gilbert, Exhibit 10, at 56, 78.

<sup>394</sup> Statement of Lt Gen Dallager, Exhibit 71, at 70.

<sup>395</sup> Statement of Male First-Class cadet, Exhibit 101, at 2. *See also* Statement of Male First-Class cadet, Exhibit 135, at 1; Statement of Male First-Class cadet, Exhibit 100.

<sup>396</sup> *See* Memorandum for Record, Interview with Male Third-Class cadet/CASIE Volunteer, Exhibit 160 (a CASIE representative can request amnesty on behalf of the victim for infractions of regulations and that the CASIE representative sends the request through the chain of command at the training wing and the Superintendent will either grant or deny the amnesty request). *See also* Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

<sup>397</sup> Statement of Male First-Class cadet, Exhibit 100, at 2 (he knows one must request amnesty before an investigation is opened in order to receive it but acknowledges he doesn't know the process). *See* Statement of Female Second-Class cadet, Exhibit 109, at 3. (cadets requesting amnesty send up a form to the Commandant or other person in the chain of command for approval.) *See generally* Statement of Victim Advocate Coordinator, Exhibit 50, at 116-17; Memorandum for Record, Group Interview with CASIE Reps, February 2, 2003, Exhibit 152.

There is confusion as to whether amnesty must be formally requested. There are various reported interpretations of whether a victim must apply for amnesty,<sup>398</sup> and the Academy Instruction does not address this issue.<sup>399</sup>

The Victim Advocate Coordinator described her knowledge of the amnesty policy, which further highlighted the confusion about the policy. She stated, "although I've been told by [the Academy Legal Office] that the victim should never have to apply for amnesty, that it should be almost a given, but...I didn't understand it that way."<sup>400</sup>

The senior leadership of the Academy does not have a consistent understanding of whether amnesty must be requested. The Vice Commandant, Col Eskridge,<sup>401</sup> stated that he does not think a victim should have to apply for amnesty and he gave a recent example of an offer of amnesty, through the Cadet Counseling Center, to an unidentified victim to help her come forward. She did not have to ask for amnesty and she was told that the Vice Commandant would offer amnesty.<sup>402</sup> However, the Training Group Commander's understanding was that amnesty has to be requested by the victim in written form.<sup>403</sup> Likewise, the Commandant thought amnesty must be applied for and approved,<sup>404</sup> and that if a victim applied for amnesty, the Vice Commandant was authorized to grant it.<sup>405</sup>

### 3. Decisions Not To Grant Amnesty

The Air Force Inspector General is currently reviewing an assault case where it has been alleged that cadets were disciplined for rules infractions after reporting a sexual assault where those infractions were related to the circumstances surrounding the assault. However, Academy officials provided explanations for some amnesty denial decisions that allowed for discipline of individuals who reported sexual assaults. For example, in one case the Vice Commandant denied amnesty to a victim for misconduct that had been on-going for an entire academic year (for months, the victim had been leaving her own room after Taps to sleep in her boyfriend's room).<sup>406</sup> In that case, the victim was given punishment for other infractions leading up to the crime. However, the Vice Commandant perceived that the victim was under the impression that because she had a CASIE umbrella around her she was invulnerable.<sup>407</sup> In another example, the Chief of Military Justice described a case where the alleged victim was brought up on an Honor Code violation where the victim had apparently lied about being assaulted when the behavior was consensual.<sup>408</sup> In a third

<sup>398</sup> Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1 (she just learned recently that one has to ask for amnesty in order to get it); Statement of Female Second-Class cadet, Exhibit 109, at 3 (the cadets send up a formal form requesting amnesty to the Commandant for approval). See Memorandum for Record, Group Interview with Male Cadets, February 27, 2003, Exhibit 161; Meeting with Brig Gen Gilbert, February 27, 2003, Exhibit 157; See Memorandum for Record, Group Interview with Female Cadets, February 25, 2003, Exhibit 56; Statement of Academy Staff Judge Advocate, Exhibit 162, at 10.

<sup>399</sup> See USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

<sup>400</sup> See Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

<sup>401</sup> Colonel Eskridge was Vice Commandant from December 2002 until March 2003.

<sup>402</sup> Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 41.

<sup>403</sup> Statement of Col Slavec, Exhibit 23, at 57-58.

<sup>404</sup> See Memorandum for Record, Interview with Brig Gen Gilbert, February 27, 2003, Exhibit 157.

<sup>405</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 50-51.

<sup>406</sup> See Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 37-41.

<sup>407</sup> *Id.*

<sup>408</sup> Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 6 (This cadet resigned in lieu of possible disenrollment).

case, the victim had been involved in underage drinking, fraternization and sex in the dorms and was punished for an event unrelated to the sexual assault.<sup>409</sup> Finally, the Vice Commandant denied amnesty in one case because he had already been made aware of a party the victim attended and other things that happened that night.<sup>410</sup> He found out through official channels that the victim was involved in this party before she went to the Cadet Counseling Center to report an alleged assault.<sup>411</sup>

#### 4. Concerns of Collateral Participants Being Punished.

The Academy Instruction and recent Academy changes to the amnesty policy have not been clear as to the status of collateral participants.<sup>412</sup> The recent changes provide that "no action will be taken under the cadet disciplinary system against cadets involved in the situation until the investigations are complete."<sup>413</sup> The *Agenda for Change* addresses this issue and provides that amnesty will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets.<sup>414</sup>

#### 5. Needed Clarifications.

As currently written, even after taking into account the *Agenda for Change*, the amnesty policy still leaves issues that will need to be addressed, and clarified in advance with cadets, to avoid misunderstandings in the future:

- Will amnesty apply to cadet infractions factually related to the sexual assault but not part of the specific incident of assault (such as a pattern of cadet fraternization by the victim that will be disclosed if an assault is reported)? (It would appear not.)
- Will amnesty apply to matters beyond mere cadet infractions, and if so, how? (e.g., underage drinking has been associated with sexual assault and can be considered both a cadet infraction, and a crime; if underage drinking and similar matters that can qualify as crimes are to be included within the amnesty process, UCMJ immunity procedures may be needed.)
- Short of discipline, what command responses to correct victim misconduct are permissible even though amnesty applies (e.g., counseling)?
- Can victim misconduct be considered for potentially adverse purposes other than discipline (e.g., suitability for commissioning)?

<sup>409</sup> See AFOSI Report of Investigation, May 1, 2001, Exhibit 163; Letter to Deputy Chief, Congressional Inquiry Division, Office of Legislative Liaison, August 17, 2002, Exhibit 164.

<sup>410</sup> Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 37-38.

<sup>411</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 78-79 (He thought taking into consideration whether the cadet reported the crime, whether the incident was previously reported through the disciplinary system and whether it was limited to a single incident. He stated that in this case the Form 10s had already been issued before she went to CASIE to request amnesty and they were not the result of a single incident).

<sup>412</sup> USAFA Instruction 51-201, § 2.8.3, Exhibit 55; and CIF 03-10 and CIF 03-11, Exhibit 146.

<sup>413</sup> CIF 03-10 and CIF 03-11, Exhibit 146.

<sup>414</sup> See *Agenda for Change*, Exhibit 4

## F. The Victim and Witness Assistance Program

### 1. The Air Force Victim and Witness Assistance Program

The Air Force has a Victim and Witness Assistance Program (VWAP), outlined in Air Force Instruction 51-201, that applies to the Air Force Academy.<sup>415</sup> The program requires that certain services, information, and considerations be given to any victim of an offense punishable under the Uniform Code of Military Justice (UCMJ) committed by a person subject to the UCMJ.<sup>416</sup> Because sexual assaults committed by cadets are punishable under the UCMJ, victims of these assaults are entitled to the services, information, and considerations the VWAP provides.<sup>417</sup> The purpose of the program is to provide significant support to victims to help them deal with the aftermath of the offense and to foster their cooperation in the military justice process.<sup>418</sup> The program is also designed to ensure that victims are afforded specific, congressionally mandated rights and considerations in the investigative and legal processes.<sup>419</sup>

The Academy is required to implement the Air Force VWAP, and in 1997, the Academy created its own supplement to the Air Force VWAP in USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*.<sup>420</sup> By regulation, this supplement to an existing Air Force Instruction is permitted, but the supplement is subordinate to the Air Force Instruction and the Academy is required to comply with both.<sup>421</sup>

The language of the Academy Instruction mirrors some of the language of the Air Force Instruction, but focuses primarily on support to sexual assault victims. The Instruction memorializes a "support first" approach to providing victim support and concentrates on the confidential reporting process and the provision of the victim advocate, counseling, and medical support services.<sup>422</sup>

<sup>415</sup> See Air Force Instruction 51-201, Administration of Military Justice, Chapter 7 (November 2, 1999) [hereinafter Air Force Instruction 51-201]. The program was first prescribed in Air Force Instruction 51-201 in July 1994, implementing the Victim and Witness Protection Act of 1982 (42 U.S.C. §§ 10601-10605), the Victims' Rights and Restitution Act of 1990 (42 U.S.C. §§ 10606, 10607), DoD Directive 1030.1, Victim and Witness Assistance, and DoD Instruction 1030.2, Victim and Witness Assistance Procedures.

<sup>416</sup> Air Force Instruction 51-201, ¶¶ 7.1.1, 7.3 and 7.5.

<sup>417</sup> Note that Article 2 of the UCMJ makes cadets subject to the Code. While recognizing the problems with the Academy's definition, sexual assault could be considered an offense when any of the following crimes are alleged: Article 120, Rape and Carnal Knowledge; Article 125, Sodomy by Force and without Consent; Article 134, Indecent Assault; Article 134, Assault with Intent to Commit Rape or Sodomy; Article 134, Indecent Acts or Liberties with a Child, among others.

<sup>418</sup> Air Force Instruction 51-201, ¶ 7.2.

<sup>419</sup> Air Force Instruction 51-201, Sections 7C and 7D.

<sup>420</sup> See USAFA Instruction 51-201 (July 15, 1997) Exhibit 86.

<sup>421</sup> Air Force Instruction 33-360, Volume 1, Publications Management, ¶ 2.2.4, 2.2.7, 3.5 (May 6, 2002) and Air Force Policy Directive 90-1, Policy Formulation, ¶¶ 2 and 4 (Sept. 1, 1998).

<sup>422</sup> A point paper written in 1997 by the Academy (when the USAFA Instruction 51-201 was implemented) articulates the objectives of the Academy's sexual assault victim and witness assistance program. These objectives are not reflected in the Instruction, but are instructive as to the original objectives of the program. The Point Paper lists the objectives as: 1) Provide confidentiality and greater decision-making ability to the victim; 2) Promote early entry into support structures (medical, counseling and the like); and 3) Encourage earlier and more likely reporting of the assault to investigative authorities. Point Paper, Victim and Witness Assistance Program, Sept. 17, 1997, Exhibit 165. These objectives differ from, but are not inconsistent with, the objective of the Air Force VWAP which are to: 1) Mitigate the physical, psychological, and financial hardships suffered by victims and witnesses of offenses; 2) Foster cooperation of

The overall responsibility for the Air Force VWAP rests with the Local Responsible Official (LRO). Under the Air Force Instruction, the LRO is the installation commander unless the installation commander delegates the responsibility to the Staff Judge Advocate (SJA), which is the case at the Academy.<sup>423</sup> This overall responsibility includes ensuring victims are identified, required services and considerations are provided, and training is accomplished.<sup>424</sup> Under the USAFA Instruction, the Cadet Counseling Center is referred to as the agency primarily responsible for administering the VWAP, but there is no indication that the installation commander has delegated the LRO responsibility to the Cadet Counseling Center, nor would such a delegation be in accordance with the Air Force Instruction.<sup>425</sup>

Interviews and other information indicate there has been no active oversight of the Air Force VWAP by 10<sup>th</sup> Air Base Wing SJA, although the current SJA began making efforts to take a more active oversight role after she arrived in the summer of 2002.<sup>426</sup> This lack of oversight resulted in some ineffectiveness of the Air Force VWAP as applied by the 10<sup>th</sup> Air Base Wing.<sup>427</sup> Moreover, as discussed below, it appears that instead of following the Air Force VWAP Instruction, the Academy was following only the Academy supplement.

## 2. The Role of the Air Force Victim Liaison and the Academy's Victim Advocate

A key feature of the Air Force VWAP includes the designation of a victim liaison to assist the victim. This person is appointed as a sort of ombudsman to ensure that the victim understands the investigative and military justice process and is aware of the rights he or she has been afforded under federal law.<sup>428</sup> In addition, the victim liaison and other victim support service providers work together to ensure that the victim receives necessary and beneficial services such as medical care, counseling, protection from the alleged perpetrator or others associated with the alleged perpetrator,

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victims and witnesses within the military justice system, and 3) Ensure best efforts are made to accord to victim of crime certain enumerated rights. Air Force Instruction 51-201, ¶ 7.2.

<sup>423</sup> Air Force Instruction 51-201, ¶ 7.7. This delegation was made by the Air Base Wing Commander to the Air Base Wing Staff Judge Advocate on May 23, 2001. Memorandum, Delegation of VWAP Responsibilities, Exhibit 166. There is no information regarding whether any delegation existed prior to this date.

<sup>424</sup> Air Force Instruction 51-201, ¶ 7.7 and ¶ 7.16.1.

<sup>425</sup> USAFA Instruction 51-201, ¶ 1.1.1 states: "While the Cadet Counseling [Center] retains much of the responsibility for the VWAP, it is to be a coordinated effort among all agencies providing services to cadets." Exhibit 55. See Air Force Instruction 51-201, ¶ 7.7.

<sup>426</sup> Memorandum for Record, Interview with Former Deputy Staff Judge Advocate, 10th Air Base Wing, March 14, 2003, Exhibit 167; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-3; see generally Statement of Former 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 168.

<sup>427</sup> Memorandum for Record, Interview with Former Deputy Staff Judge Advocate, 10th Air Base Wing, March 14, 2003, Exhibit 167; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-3. Note that the 10<sup>th</sup> Air Base Wing played no role in dealing with victims whose cases were only reported to CASIE or handled solely through the cadet disciplinary system. *Id.* at 2, 4. See also Memorandum for Record, Interview with Former Chief of Military Justice, 10<sup>th</sup> Air Base Wing, Exhibit 169, at 1 (indicating her efforts to revitalize the Air Force VWAP and the Academy).

<sup>428</sup> Air Force Instruction 51-201, ¶ 7.8, Section 7D and Figure 7.1. At least one victim has complained that the Legal Office did not provide adequate information about the legal process while preparing for a hearing. Statement of Two First-Class Female Cadets, Exhibit 136, at 3. But see Memorandum from 10<sup>th</sup> Air Base Wing Chief of Military Justice to Academy Legal Office Staff Judge Advocate, February 4, 2003, Exhibit 170 (indicating at least three meetings with victim prior to Article 32 hearing).

and restitution (when appropriate and available).<sup>429</sup> In the Air Force, this person is typically a judge advocate or paralegal.<sup>430</sup>

An important responsibility of the victim liaison and others under the Air Force VWAP is ensuring victims are aware of their rights.<sup>431</sup> Under DoD Instruction 1030.2 and Air Force Instruction 51-201, victims have the right to: 1) be treated with fairness and respect for the victim's dignity and privacy; 2) reasonable protection from a suspect or others working in concert with the suspect; 3) notification of all court-martial proceedings; 4) be present at all public court-martial proceedings, unless a military judge determines the victim's testimony would be materially affected if the victim heard other testimony; 5) confer with trial counsel; 6) appropriate restitution, when available; and 7) information about an accused's conviction, sentencing, confinement and release.<sup>432</sup> Victim liaisons and others make victims aware of these rights by using a DD Form 2701, *Initial Information for Victims and Witnesses of Crime*.<sup>433</sup> It does not appear that victims have been properly advised of these rights by CASIE representatives or the Academy's victim advocates.<sup>434</sup> Unless sexual assault victims at the Academy have personal contact with the Legal Office, AFOSI, or Security Forces, the victims may not be fully aware of their rights.<sup>435</sup> If not fully and carefully advised, a victim may be unaware of the support available in the event of intimidation by others, may miss an opportunity to receive restitution, and may generally be unaware of what they have a right to expect from the Academy.

The liaison serves another important function as the conduit for another key aspect of the VWAP—involvement of the victim in the investigative and legal process. More than just serving as a witness to prove the offense, under the Air Force VWAP, in addition to the rights listed above, victims are given the opportunity to provide input on decisions whether a case should be tried by court-martial or dismissed. Victims are also given the opportunity to provide their views on whether alleged offenders should be discharged in lieu of trial by court-martial or any plea negotiations.<sup>436</sup> The victims' opinions are not binding on the decision-maker, but are carefully weighed in making the decision.<sup>437</sup> Victims also have the right to confer with the trial counsel involved in the case;<sup>438</sup> this helps the victim gain a better understanding of the process and can eliminate anxiety the victim may have about the process. Through significant victim participation and support, the victim can feel more fully involved and often more supported in the process.

<sup>429</sup> *Id.* at ¶¶ 7.8, 7.10, 7.13, 7.15 and Figure 7.1.

<sup>430</sup> Air Force Instruction 51-201, ¶ 7.8 states that a victim liaison may also be a medical or mental health care provider or "other person appropriate under the circumstances of a particular case."

<sup>431</sup> *Id.* at Figure 7.1. This task of ensuring victims are aware of their rights is the responsibility of the Legal Office, Security Forces, AFOSI, Medical Group and Family Support Center.

<sup>432</sup> *Id.* at ¶ 7.9.

<sup>433</sup> See DD Form 2701; DoD Instruction 1030.2, ¶ 6.1.

<sup>434</sup> Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Memorandum for Record, Interview with former CASIE Program Manager, Exhibit 172; see also CASIE Training Syllabus, Exhibit 173 (noting no reference to training on Air Force VWAP or Victim's Rights). The DD Forms 2701 are not distributed by the Medical Group, though it is a responsibility designated to them under the Air Force Instruction. Memorandum for Record, Telephonic Interview with Physician, Cadet Clinic, Exhibit 174.

<sup>435</sup> Statement of 10<sup>th</sup> Air Base Wing Paralegal, Exhibit 175, at 2; Statement of Former OSI Detachment Commander, Exhibit 176, at 5; Statement of Current AFOSI Detachment Commander, Exhibit 177, at 5; Statement of Commander, 10<sup>th</sup> Security Forces Squadron, Exhibit 178, at 5.

<sup>436</sup> Air Force Instruction 51-201, ¶ 7.10.10.

<sup>437</sup> *Id.* at ¶ 7.10.11.1.

<sup>438</sup> *Id.* at ¶ 7.9.5.

Under the USAFA Instruction, CASIE representatives and the victim advocates provide services similar to a victim liaison with respect to identifying and securing medical and on-base counseling services, but appear to go well beyond in terms of the personal attention shown to the victim. However, the victim advocates do not perform all the other duties of a victim liaison required under the regulation.<sup>439</sup> For example, a sexual assault victim at the Academy is not provided legal support services to learn about the investigative and legal process, unless the victim requests such services.<sup>440</sup> Victims advised about the legal process by CASIE members, victim advocates, or others rather than legal officers or paralegals may receive inaccurate or incomplete information.<sup>441</sup> The victim advocates, while often an effective voice with command in securing needed emergency leave and temporary reprieves from discipline, do not appear to play a role in ensuring victims are involved in command's decisions regarding the case.<sup>442</sup>

Following only the USAFA Instruction, the victim advocates provide admirable personal services to victims in terms of helping them get medical attention and on-base counseling and in helping them to cope while enduring the rigors of Academy life. However, the failure to incorporate all aspects of the Air Force Victim and Witness Assistance Program can result in victims receiving less than they are due by regulation.

### 3. The Air Force Victim and Witness Assistance Council and the Academy's Sexual Assault Services Committee.

Another important feature of the Air Force VWAP is the Victim and Witness Assistance Council mandated by DoD Instruction.<sup>443</sup> The purpose of this Council is to ensure an interdisciplinary approach among providers of victim support services. Under the DoD Instruction, the individuals who may be included on the Council are law enforcement personnel, criminal investigators, chaplains, family advocacy personnel, emergency room personnel, family service

<sup>439</sup> See Statement of Victim Advocate Coordinator, Exhibit 50 at 42-43, Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1; see generally Statement of CASIE Program Manager, Exhibit 99, at 4-5. Note that CASIE representatives and victim advocates do not usually provide information on off-base counseling options. This is an important option because cadets could perceive that a stigma may attach to them if they are seen going to counseling services on-base. Statement of Victim Advocate Coordinator, Exhibit 50 at 14; Statement of Flight Chief, Life Skills Center, Exhibit 179, at 18.

<sup>440</sup> Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 30 and 86; Statement of Former 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 168, at 2. This position is consistent with the Academy's VWAP approach to allow the victim to determine how much and what kind of support is desired. Unfortunately, this may result in the victim missing out on accurate and helpful information.

<sup>441</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 54; Memorandum for Record, Interview with CASIE Program Manager, Exhibit 172, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 30, Statement of Male First-Class cadet CASIE Representative, Exhibit 101, at 2; AFOSI Report of Investigation, E-mail from Male Third-Class cadet to Female Third-Class cadet Victim (Human Resources officer told him he violated the Uniform Code of Military Justice because he and victim did not have sex in the "missionary position"), Exhibit 180.

<sup>442</sup> Statement of Victim Advocate Coordinator, Exhibit 182, at 4-5, 27, and Statement of Victim Advocate Coordinator, Exhibit 50, at 116; see also Memorandum for Record, Interview with Former CASIE Program Manager, Exhibit 172 at 1 (indicating victim had to take initiative to talk with command about non-referral of charges); Statement of Former Chief, Sexual Assault Services, Exhibit 82, at 4. But see Memorandum for Record from Assistant Staff Judge, 10<sup>th</sup> Air Base Wing, to Staff Judge Advocate, Academy Legal Office, March 11, 2003, Exhibit 181 (indicating 10<sup>th</sup> Air Base Wing Victim Liaison sought victim input following Article 32 hearing).

<sup>443</sup> DoD Instruction 1030.2, ¶ 5.2.6. This requirement does not appear in Air Force Instruction 51-201, but references to the DoD Instruction are found in the Air Force Instruction, and all new judge advocates receive training at The Judge Advocate General's School that covers this topic.

center personnel, equal opportunity personnel, judge advocates, unit commanding officers, and corrections personnel. Until recently there was no such Council active at the Academy.<sup>444</sup>

The Academy's Program as of 1995 included an interdisciplinary committee known as the Sexual Assault Services Committee.<sup>445</sup> The primary purpose of the Sexual Assault Services Committee is to ensure "an interdisciplinary case management approach is taken by trained victim and witness service providers," consistent with DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*. Despite the stated purpose, the Committee did not operate with a case management approach.<sup>446</sup> Meeting minutes indicate that the Sexual Assault Services Committee tended to focus on education and training of CASIE representatives and the Cadet Wing rather than integrated delivery of services to victims.<sup>447</sup> This outreach to the Cadet Wing to explain the Academy's approach to victim and witness assistance is not required by the Air Force VWAP. It undoubtedly provides valuable information to let the cadets know that support services are available. However, the Committee did not perform its primary duty of interdisciplinary case management.

According to the USAFA Instruction, the Sexual Assault Services Committee also serves an administrative function as the central resource for tracking and monitoring reported cases of sexual assault and rape.<sup>448</sup> The Committee is required to provide biannual reports on sexual assault issues to the Superintendent and other Academy senior leaders.<sup>449</sup>

According to the USAFA Instruction, the Sexual Assault Services Committee includes representatives from all of the same groups required as participants under the DoD-mandated Victim and Witness Assistance Council, except Family Advocacy and Family Support Center personnel. In addition, from the USAFA Instruction, it appears that the Committee also has representatives from the Cadet Clinic, the Cadet Counseling Center, CASIE Hotline, Chaplain, the Preparatory School, and the Human Relations Division, as well as an Air Officer Commanding (AOC) and a Military Training Leader (MTL). In actuality, not all designated agencies have

<sup>444</sup> See statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2 and Statement of Former 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 168, at 2 (where the Council is omitted in the description of the Academy process). A Victim and Witness Assistance Council, organized by the 10<sup>th</sup> Air Base Wing Legal Office, met for the first time in November 2002 and again in January 2003. However, as of the January meeting, this Council did not include any representation from the Counseling Center, CASIE, or the Victim Advocate Program. The Victim Advocate Coordinator has reportedly been invited to attend the next meeting, which was not yet scheduled as of March 2003. Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 3; Statement of 10<sup>th</sup> Air Base Wing Paralegal, Exhibit 175, at 3; Memorandum from 10<sup>th</sup> Air Base Wing Commander to the 10<sup>th</sup> Air Base Wing Legal Office, (Sept. 13, 2002), Exhibit 183 (appointing members of the Victim and Witness Assistance Council). *But see* Memorandum for Record, Interview with Former Chief of Military Justice, 10<sup>th</sup> Air Base Wing, Exhibit 169, at 2 (indicating a Council that met a few times between June 1999 and Sept. 2001).

<sup>445</sup> The Sexual Assault Services Committee was officially created in 1997 with the implementation of USAFA Instruction 51-201. However, the Vice Commandant from 1995 to 1998 said the Sexual Assault Services Committee started meeting in 1995, prior to the creation of USAFA Instruction 51-201. Statement of Vice Commandant (1995 to 1998), Exhibit 46 at 16-17. The initial USAFA Instruction 51-201 took effect on July 15, 1997, Exhibit 86. The current version is dated April 18, 2000, Exhibit 55.

<sup>446</sup> Memorandum for Record, Group Interview of Current and Former Cadet Counseling Center Directors, February 22, 2003, Exhibit 44 (case-by-case integration with other agencies is not the purpose of SASC, the purpose is for administration).

<sup>447</sup> See Sexual Assault Services Committee Meeting Minutes, Sept. 13, 2000 – January 31, 2003, Exhibit 70 through Exhibit 81. See also Memorandum for Record, Interview with Cadet Counseling Center Personnel, Exhibit 154.

<sup>448</sup> USAFA Instruction 51-201, ¶¶ 2.4 and 2.11.1, Exhibit 55.

<sup>449</sup> *Id.* The effectiveness of this aspect of the Sexual Assault Services Committee is discussed in this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

representatives at the Committee meetings. According to meeting minutes, the membership of the Committee has varied and its numbers have decreased from twenty-eight members assigned and sixteen members present in September 2000, to thirteen members assigned and eight members present in January 2003.<sup>450</sup>

There appears to be a general lack of awareness of the Sexual Assault Services Committee among victim support service providers. The Commander and other senior members of the 10th Medical Group did not know who represented them on the Committee despite their organizations being designated as committee members.<sup>451</sup> The chaplain representative stated she had been contacted twice by someone on the Committee to verify that she was still the representative, but she was never invited to attend any meetings.<sup>452</sup> Further, it appears the Committee did not include a representative of the 10<sup>th</sup> Air Base Wing Legal Office, which provides victim support during court-martial.<sup>453</sup>

The Sexual Assault Services Committee is directed to meet as needed to review programs and services (including Cadets Advocating Sexual Integrity and Education and the Victim's Advocate Program).<sup>454</sup> The Committee initially met every month, but the frequency of the meetings tapered off over the years.<sup>455</sup> Recent Committee "Minutes of Meetings" show the Committee met on September 13, 2000, November 15, 2000, March 7, 2001, October 5, 2001, December 13, 2001, February 21, 2002, May 2, 2002 and January 31, 2003.<sup>456</sup> There were only two meetings in 2002 and a gap of nearly nine months between meetings. The reasons given for the time between the May 2002 meeting and the January 2003 meeting were scheduling conflicts, turnover in personnel on the Committee and maternity leave by the primary organizer, the Chief of Sexual Assault Services.<sup>457</sup> The infrequency of these meetings and inconsistent gathering of relevant service providers prevents effective service delivery because providers have little opportunity to cross feed, to improve their overall awareness of the program objectives and to improve their overall awareness of the available services.

The lack of an Air Force Victim and Witness Assistance Council and the ineffectiveness of the Sexual Assault Services Committee resulted in a lack of an interdisciplinary approach to delivery of service to victims of sexual assault at the Academy.

<sup>450</sup> See Sexual Assault Services Committee Meeting Minutes for Sept. 13, 2000 and January 31, 2003, Exhibits 70 and 81. According to the first Sexual Assault Services Committee chairperson, the committee was much smaller initially and included representatives from the Center for Character Development, the Cadet Clinic, the 10th Medical Group, a chaplain, and cadets from CASIE. Additional members were added over time. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16-17.

<sup>451</sup> Statement of 10<sup>th</sup> Medical Group Command Members, Exhibit 184, at 2.

<sup>452</sup> Statement of Female Group Chaplain, Exhibit 32, at 2.

<sup>453</sup> Sexual Assault Services Committee Member Handbook AY2000-2001 (excerpts), List of Sexual Assault Services Committee Members, Exhibit 185; Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 2; *But see* Memorandum for Record, Interview with Former Chief of Sexual Assault Services, Exhibit 82, at 3 (stating a representative from both legal offices was present during her tenure.)

<sup>454</sup> USAFA Instruction 51-201, ¶ 2.4.

<sup>455</sup> The Committee met every month during the tenure of the first chairperson (November 1995 to May 1998), although she thought meetings might have tapered off to twice a quarter towards the end of the period. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 17.

<sup>456</sup> See Sexual Assault Services Committee Meeting Minutes, Exhibits 70-81.

<sup>457</sup> Statement of Vice Commandant (December 2002 to April 2003), Exhibit 124, at 23-24, and Statement of Victim Advocate Coordinator, Exhibit 182, at 30.

#### 4. Air Force Victim and Witness Assistance Program Training

Under Air Force Instruction 51-201, each organization at the Academy with victim support responsibilities is also responsible for training its personnel on the Air Force Victim and Witness Assistance Program (VWAP). The Local Responsible Office (LRO, at the Academy, the Staff Judge Advocate for the 10<sup>th</sup> Air Base Wing) is responsible for ensuring that all required training has been conducted by base agencies involved in delivering services to victims.<sup>458</sup> The agencies, such as Security Forces, OSI, Family Support, Medical Group, and Chaplains, have varying responsibilities with regard to delivery of services, but through this training, all should be made aware of the responsibilities of and services available to victims through support agencies on and off-base.<sup>459</sup>

The 10<sup>th</sup> Air Base Wing Legal Office has not formally trained its own personnel in the VWAP and has only recently conducted training on the Air Force VWAP for other service providers, such as Security Forces and AFOSI.<sup>460</sup> It appears that this training did not include any chaplains currently serving cadets,<sup>461</sup> CASIE representatives, victim advocates or any members of the Cadet Counseling Center staff.<sup>462</sup> As a consequence, the service providers have little understanding of what the Air Force VWAP program requires and what inadequacies exist by following only the Academy program.

Although the two victim advocates from the Victim Advocate Program have been trained on victim advocacy through a local law enforcement agency, neither has received training on the Air Force VWAP program.<sup>463</sup> The Victim Advocate Coordinator has also offered opportunities for victim advocacy training from civilian law enforcement to members of the Sexual Assault Services Committee.<sup>464</sup> This civilian training is valuable in that it helps individual providers better understand how to interact with victims, but it does not help Academy service providers understand the Air Force approach to interdisciplinary victim assistance.

The result of this lack of training is an overall lack of understanding about the full scope of responsibilities and interrelationships of the agencies responsible for providing victim support services under the Air Force VWAP.

#### G. Victim Support

As part of its sexual assault service program, the Academy offers a variety of resources to cadet victims of sexual assault, including professional and peer counseling services, a victim support group, a 24-hour Hotline, and the availability of medical, legal, investigative and other expert assistance.

<sup>458</sup> Air Force Instruction 51-201, ¶ 7.16.3.

<sup>459</sup> See generally, Air Force Instruction 51-201, Chapter 7.

<sup>460</sup> Statement of VWAP Representative, 10<sup>th</sup> Air Base Wing, Exhibit 175, at 1; Memorandum for Record, Telephonic Interview with 10<sup>th</sup> Security Forces Squadron, Exhibit 186, at 1; Memorandum from 10<sup>th</sup> Air Base Wing Commander to 10<sup>th</sup> Air Base Wing Legal Office, (Sept. 13, 2002), Exhibit 183 (appointing members of the Victim and Witness Assistance Council); see also Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 3. But see Memorandum for Record, Interview with Former Chief of Military Justice, 10<sup>th</sup> Air Base Wing, Exhibit 169, at 1 (indicating she arranged training for the VWAP paralegal who is no longer at the Academy).

<sup>461</sup> See Chaplain Support, this Report, Section III.G.

<sup>462</sup> Statement of Director, Cadet Counseling Center, Exhibit 33 at 9.

<sup>463</sup> *Id.* at 10.

<sup>464</sup> Statement of Female Group Chaplain, Exhibit 32, at 2.

# I. Cadets Advocating Sexual Integrity and Education (CASIE).

Prior to the *Agenda for Change*, the primary gateway for sexual assault victims to be notified of victim support services at the Academy was CASIE, a cadet-staffed organization. CASIE is managed by a second lieutenant who is a new graduate of the Academy. CASIE operates a 24-hour Hotline for confidential<sup>465</sup> and anonymous sexual assault reporting.<sup>466</sup>

Sexual assault victims and other cadets can contact a CASIE representative on the Hotline or in person to receive information regarding on-base medical, counseling, and spiritual services that are available to sexual assault victims. When a sexual assault victim contacts CASIE, a CASIE representative first confirms whether the victim is safe and, if not, assists in getting the victim into a safe situation. Once a victim is determined to be safe, the CASIE representative assesses whether the victim needs emergency medical or counseling attention, and, if so, assists the victim in getting those services. CASIE representatives also put the victim in contact with a certified victim advocate.<sup>467</sup> (For a discussion of services provided by the victim advocate, see item 2, this section, below.)

In addition to addressing immediate needs, CASIE representatives provide information on "options," such as having a rape kit examination, being tested for sexually transmitted diseases, and, if desired, obtaining the morning-after pill (a contraceptive, *not* the drug RU-486 which causes a pharmaceutical abortion). For example, a CASIE representative will describe how a rape kit examination is accomplished, will explain the purpose of such an exam, and will explain how a victim advocate can assist the victim in obtaining the exam.<sup>468</sup>

If requested by the victim, the CASIE representative can also arrange for meetings with AFOSI and the Academy Legal Office for the victim to obtain additional information by discussing their circumstances as a "hypothetical."<sup>469</sup> CASIE has minimal contact with 10<sup>th</sup> Air Base Wing Legal Office which prosecutes criminal cases arising at the Academy.<sup>470</sup> In some cases, victims receive information on the investigative and judicial processes by CASIE representatives rather than from the subject matter experts at AFOSI and the 10<sup>th</sup> Air Base Wing Legal Office.<sup>471</sup> This may

<sup>465</sup> For additional information on the confidential/anonymous reporting system, see this Report, Section III.D., the Unique Reporting System.

<sup>466</sup> See CASIE Wallet Card, Exhibit 187; Statement of First-Class cadet Male/CASIE Rep, Exhibit 101, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 71; DFBLC Operating Instruction 75-7, Cadet Sexual Assault Hotline, Exhibit 188, at 3.

<sup>467</sup> Statement of Male First-Class cadet/CASIE Rep, Exhibit 101; Statement of Female First-Class cadet/CASIE Rep, Exhibit 19; Statement of Male First-Class cadet/CASIE Rep, Exhibit 100; Statement of CASIE Program Manager, Exhibit 99, at 3; Cadet Sexual Assault Flowchart, Exhibit 189; Statement of Victim Advocate Coordinator, Exhibit 50, at 53-57.

<sup>468</sup> Statement of Male First-Class cadet/CASIE Rep, Exhibit 101, Statement of Female First-Class cadet/CASIE Rep, Exhibit 100; Statement of CASIE Program Manager, Exhibit 99, CASIE PHONEBOOK, Exhibit 190.

<sup>469</sup> Statement of Female First-Class cadet, Exhibit 19; Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91 at 3; Statement of CASIE Program Manager, Exhibit 99 at 3-4. Note that AFOSI does not reveal to command the victim's identity or any facts learned from the victim about the sexual assault unless the victim consents.

<sup>470</sup> Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 5; For a discussion about the two legal offices at the Academy, the 10<sup>th</sup> Air Base Wing Legal Office and the Academy Legal Office, see this Report, Section V.C., Legal Offices Advising Commanders.

<sup>471</sup> Statement of Male First-Class cadet/CASIE Rep, Exhibit 101; Statement of Lt Gen Dallagcr, Exhibit 71, at 71; Statement of the Academy Legal Office, Chief of Military Justice, Exhibit 91, at 6, Memorandum for Record, Interview

result in inaccurate or incomplete information being relayed to the victim, which can in turn create disappointment or unattainable expectations in the mind of the victim. For example, the victim may receive misinformation about what will be involved in investigating or prosecuting the case and then be disappointed or even angry when their reality differs from their expectations.

While sexual assault victims are made aware of on-base counseling and support services, victims are not usually advised of any off-base services, although the Air Force Instruction indicates victims should be made aware of these as well.<sup>472</sup>

Based upon reports from cadets, coaches, and the Superintendent's January 2003 Sexual Assault Services survey, cadets report a high awareness and generally positive view of the CASIE program.<sup>473</sup> However, the positive impression of CASIE was not universally reflected in the January 2003 survey. Over half (56%) of the female First-Class cadets endorsed the use of an outside source to report sexual assault rather than the CASIE Hotline.<sup>474</sup> The survey data does not indicate the reason for this view. The survey reflected similarly high numbers of female First-Class cadets (53%) who indicated they did not agree that that Academy leadership was interested in helping sexual assault victims recover from the consequences of sexual assault.<sup>475</sup> Fifty-four percent of the female First-Class cadets also disagreed that the Academy leadership was interested in identifying sexual assault perpetrators and bringing them to justice.<sup>476</sup> Seventy percent of the female First-Class cadets did not believe the attitude around the Academy was supportive of care and concern for victims of sexual assault.<sup>477</sup> Similar responses, but at a slightly lower percentage, were also given by female Second-Class cadets on these topics.<sup>478</sup>

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with Brig Gen Gilbert, Exhibit 157; Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 3.

<sup>472</sup> See Air Force Instruction 51-201, Section 7D, noting Figure 7.3, ¶¶ 7.10.12, 7.10.13, 7.16.5; *see also* DoD Instruction 1030.2, ¶ 6.1.4; Statement of Male First-Class cadet/CASIE Rep, Exhibit 100 at 1. *See generally* statement of CASIE Program Manager, Exhibit 99, at 4-5.

<sup>473</sup> Memorandum for Record, Group Interview with Coaches, Exhibit 369; Memorandum for Record, Group Interview with Female Cadets, Exhibit 56; Memorandum for Record, Group Interview with Cadet Leaders, Exhibit 370; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25; Memorandum for Record, Group Interview, Male Cadets, Exhibit 161; Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 210. Positive comments by cadets on the January 2003 Cadet Wing survey included:

"...CASIE has been an excellent program in helping cadets become more aware of the problem."

"The CASIE representative I talked to was very helpful and I could not have made it without her help."

"The CASIE representatives seem to be very concerned for us and our safety as females. One of the things I worried about when deciding to choose to come to the Academy or not was the fact that females are vastly outnumbered...Once I received my first CASIE brief, I was much relieved to find out that there is a support network of people who are genuinely concerned for my safety...."

"...CASIE and [the Counseling Center]...have helped me tremendously and are part of the reason I am still here and did not leave after my attack."

"I appreciate the availability of CASIE members and I hope that the Hotline card that I carry on me is kept and used by all cadets. It proved extremely helpful when a cadet I knew approached me about being sexually assaulted."

Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143.

<sup>474</sup> Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 210, at 16.

<sup>475</sup> *Id.* at 13.

<sup>476</sup> *Id.* at 12.

<sup>477</sup> *Id.* at 7.

<sup>478</sup> *Id.* at 7, 12, 13, and 16.

## 2. The Victim Advocate Program

The Academy, through Sexual Assault Services within the Cadet Counseling Center, has a Victim Advocate Program designed to provide dedicated support to sexual assault victims.<sup>479</sup> The Coordinator of this program, who also serves as one of the victim advocates, is a retired lieutenant colonel and registered nurse.<sup>480</sup>

According to USAFA Instruction 51-201, the primary role of the victim advocate is to ensure the victim is afforded necessary services, provide assistance in understanding the phases of case progression, and provide assistance to the victim in making decisions regarding their case.<sup>481</sup> In this role, the Coordinator and the one other victim advocate meet with sexual assault victims to advise them of their options regarding reporting and identify on-base resources. The victim advocate will also assist the victim in obtaining support services such as counseling or medical treatment. If the victim is willing to have a rape kit exam performed, the victim advocate arranges to have the exam accomplished with as little disruption to the victim as possible and without exposing the victim's identity to others at the Academy. The victim advocate transports the victim in the victim advocate's personal vehicle to Memorial Hospital and remains with the victim at the hospital. The victim advocate encourages counseling and makes victims aware of a cadet-run Sexual Assault Victim Support Group. The victim advocate provides transportation, if required, to appointments related to the sexual assault. Also, if the victim requests, the victim advocate will sit with the victim during investigative interviews or other appointments related to the sexual assault.<sup>482</sup>

The Coordinator has an enormous commitment to victim support and has been described as "a Victim Advocate all the way down to her soul."<sup>483</sup> For example, she will routinely use her own funds to buy a meal for victims following a rape kit exam in order to allow the victim time to unwind before returning to the Academy.<sup>484</sup> She also remains at the Cadet Counseling Center late on Tuesday evenings, so she can be available for the cadet-run Sexual Assault Victim Support Group that meets there.<sup>485</sup> In one case, she advocated to the leadership on behalf of a victim who was scheduled to testify in an Article 32 hearing on the same day she was about to be given a Form 10,<sup>486</sup> a formal notification of possible cadet discipline. As a result of her efforts, the Form 10 was

<sup>479</sup> USAFA Instruction 51-201, ¶ 2.6, Exhibit 55.

<sup>480</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 2-3.

<sup>481</sup> USAFA Instruction 51-201, ¶ 2.6, Exhibit 55.

<sup>482</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 4-5, 23-24; Statement of AFOSI Detachment Commander, Exhibit 177 at 2; Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2-3.

<sup>483</sup> Statement of Vice Commandant, Exhibit 124, at 27. *See also* Statement of former Commandant, Exhibit 64, at 27; Statement of Victim Advocate Coordinator, Exhibit 50 at 44; Memorandum for Record, Interview with Anonymous Victim Support Group Member, Exhibit 262; Memorandum for Record, Interview with Counseling Center Personnel, Exhibit 154; Memorandum for Record, Interview with Victim Support Group, Exhibit 137; Memorandum for Record, Telephonic Interview with Former CASIE Program Manager, Exhibit 172.

<sup>484</sup> Statement of Victim Advocate Coordinator, Exhibit 50 at 44.

<sup>485</sup> Statement of Victim Advocate Coordinator, Exhibit 352.

<sup>486</sup> An AF Cadet Wing Form 10, Report of Conduct a Cadet Wing form for reporting cadet conduct. *See generally* AF Cadet Wing Instruction 51-201, Discipline and Probation System, Exhibit 265. When a cadet is alleged to have engaged in misconduct, the cadet will receive a Form 10 notifying him or her of the allegation and the cadet is given an opportunity to respond. Often after the cadet submits the response, punishment follows. *See*, this Report, Section III.E., Amnesty for Victims.

held in abeyance and the victim was able to testify without having the additional stress or distraction of having received a Form 10.<sup>487</sup>

### 3. Legal Office Support

The Academy currently has two legal offices: the 10<sup>th</sup> Air Base Wing and the Academy Legal Office.<sup>488</sup> Under Air Force Instruction 51-201 and under a delegation from the 10<sup>th</sup> Air Base Wing Commander, the 10<sup>th</sup> Air Base Wing Staff Judge Advocate (SJA) is the installation official responsible for administering the base Victim Witness Assistance Program (VWAP).<sup>489</sup> Despite this overall responsibility, the Air Base Wing Legal Office has had little interaction with CASIE, the Victim Advocate Program, or the Sexual Assault Services Committee, which was designed to ensure an interdisciplinary approach to assisting sexual assault victims.<sup>490</sup>

The 10<sup>th</sup> Air Base Wing Legal Office should provide information, referrals, and assistance (similar to the information received through a CASIE representative or victim advocate) through a victim liaison appointed by the SJA. Under the instruction, these services are to be provided to any victim of an offense punishable under the Uniform Code of Military Justice (UCMJ).<sup>491</sup>

However, in practice, the 10<sup>th</sup> Air Base Wing provides victim support only in cases involving Uniform Code of Military Justice (UCMJ) actions. It provides no victim support for matters handled through the cadet disciplinary system even though some offenses handled through the cadet disciplinary system (e.g., some assaults) are punishable under the UCMJ.<sup>492</sup>

In sexual assault cases that go to court-martial, the 10<sup>th</sup> Air Base Wing Legal Office distributes to the victim the DD Form 2701, *Initial Information for Victims and Witnesses of Crimes*, which is required under Air Force Instruction 51-201 and DoD Instruction 1030.2.<sup>493</sup> The information on the form includes a list of the victim's rights; contact numbers for additional information on available assistance, investigation status, prosecution status, and compensation; and direction on what to do if the victim is threatened or harassed.<sup>494</sup>

Through referrals from CASIE or a victim advocate, sexual assault victims are offered the opportunity to present a "hypothetical." If the victim chooses, the victim or the victim advocate presents the facts of the assault to an attorney from the Academy Legal Office and the attorney tells the victim what is likely to occur based on those facts. This information assists the victim in

<sup>487</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 116-117.

<sup>488</sup> Statement of Academy Staff Judge Advocate, Exhibit 162 at 1; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 1. See this Report, Section V.C., Legal Offices Advising Commanders.

<sup>489</sup> Air Force Instruction 51-201, ¶ 7.7; Letter of Delegation of VWAP Locally Responsible Official Duties, May 23, 2001, Exhibit 166.

<sup>490</sup> USAFA Instruction 51-201, ¶ 2.4; See Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 5. See also Sexual Assault Services Committee Meeting Minutes, Sept. 13, 2000 to January 31, 2003, Exhibit 70 through Exhibit 81 (reflecting no involvement by 10<sup>th</sup> Air Base Wing Legal Office); Memorandum for Record, Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 1.

<sup>491</sup> Air Force Instruction 51-201, ¶ 7.8 and ¶ 7.1.1 and Section 7D.

<sup>492</sup> Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91 at 3; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 162, at 12.

<sup>493</sup> Air Force Instruction 51-201, Fig. 7.1; DoD Instruction 1030.2, ¶ 6.1; Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 2.

<sup>494</sup> DD Form 2701, Pamphlet, *Initial Information for Victims and Witnesses of Crimes*, Exhibit 367.

deciding whether to make a formal report and to have the matter investigated under a system that allowed victims to control the process.<sup>495</sup>

#### 4. Counseling Center Support

The Cadet Counseling Center is aligned under the Department of Behavioral Sciences and Leadership which currently reports to the Dean of Faculty.<sup>496</sup> The Cadet Counseling Center provides counseling services to cadets for a variety of issues and houses Sexual Assault Services, which provides sexual assault and sexual abuse counseling and sexual assault education and prevention.<sup>497</sup> There is no cost to cadets for these counseling services. The Cadet Counseling Center is staffed by four Ph.D. psychologists, three licensed clinical psychologists, one licensed professional counselor, one masters-level social worker, one masters-level counselor, a program manager for the Victim Advocate Program who is a registered nurse and also serves as a victim advocate, one program manager for the CASIE program who also serves as a victim advocate, and one office manager.<sup>498</sup> One of the counselors is responsible for handling alcohol issues. The counselors also serve as faculty members for the Department of Behavioral Sciences and Leadership. Each counselor's number of teaching hours varies.<sup>499</sup>

The Cadet Counseling Center has held an accreditation from the International Association of Counseling Services since 1991.<sup>500</sup> Part of the accreditation standards requires a policy of limited confidentiality.<sup>501</sup> The Cadet Counseling Center primarily provides individual counseling, but also provides some group counseling. Sexual assault victims are aware of the sexual assault counseling services available at the Cadet Counseling Center through outreach efforts and briefings by CASIE representatives and victim advocates. Generally, a sexual assault victim is referred for counseling by a victim advocate or a CASIE representative.<sup>502</sup>

#### 5. Sexual Assault Victim Support Group

The sexual assault victim support group is a cadet-led victim support tool and cadets are the only participants. It operates unofficially, but with the approval of the Cadet Counseling Center. The Victim Advocate Coordinator is the unofficial advisor for the group.<sup>503</sup> The group began in February 1995 when two female cadet sexual assault victims asked the Coordinator if they could start a support group. The Coordinator does not actively participate in the discussion, nor does she usually remain with the group. She will only stay the first few minutes of the meeting to determine

<sup>495</sup> Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 3; Statement of CASIE Program Manager, Exhibit 99, at 5; Statement of Academy Staff Judge Advocate, Exhibit 162, at 10.

<sup>496</sup> Statement of Director, Cadet Counseling Center, Exhibit 33, at 1; Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 1.

<sup>497</sup> Brochure, Cadet Counseling and Leadership Development Center: A Guide to Services, Exhibit 349.

<sup>498</sup> Statement of Director, Cadet Counseling Center, Exhibit 33, at 2.

<sup>499</sup> Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 5; Statement of Counseling Center Director, Exhibit 33, at 3-4.

<sup>500</sup> Brochure, Cadet Counseling and Leadership Development Center: A Guide to Services, Exhibit 349.

<sup>501</sup> International Association of Counseling Services Accreditation Standards, Exhibit 130. See this Report, Section III.D. The Unique Reporting System, for additional information on the confidentiality standards required for accreditation.

<sup>502</sup> Statement of Director, Cadet Counseling Center, Exhibit 33, at 2-3; Statement of Victim Advocate Coordinator, Exhibit 50, at 18-19.

<sup>503</sup> Statement of Victim Advocate Coordinator, Exhibit 352, at 2-3.

that the participants are coping well.<sup>504</sup> No professional counselors sit in on the sessions.<sup>505</sup> According to one participant, the group is not designed to be therapeutic; it is more a social outlet.<sup>506</sup>

The group meets weekly and its size varies. The group consisted of approximately four members present at the Academy in February 2003.<sup>507</sup> Participants may come in only for a few sessions. Participation is strictly voluntary and attendance is not monitored in any formal way, though other support group members may check on a "regular" member who is absent. Sexual assault victims are made aware of the availability of this support group through the victim advocate. Some participants have been a part of the group for more than a year.<sup>508</sup>

## 6. Medical Support

The 10<sup>th</sup> Medical Group operates hospital and clinic facilities at the Academy. The hospital is located "down the hill" approximately two miles from the cadet dormitories. The 10<sup>th</sup> Medical Group, through the Medical Operations Squadron, operates the Cadet Clinic adjacent to Fairchild Hall within a few minutes' walking distance from the cadet dormitories.<sup>509</sup> At the hospital and the Cadet Clinic, in accordance with USAFA Instruction 51-201, sexual assault victims can receive confidential medical treatment, testing for sexually transmitted diseases and the morning-after pill.<sup>510</sup> There is no cost to the cadet for these services.

There is currently no military database system to code sexual assault cases in military treatment facilities. However, the Academy uses a medical data tracking system that has codes that could be used for sexual assault. The system indicates only three patients were seen for issues relating to sexual assault in the last three years. The Medical Operations Squadron commander explained that the numbers may not accurately reflect the true number of sexual assault victims seen, because it is the practitioner's individual determination of facts as to why the patient is being seen that dictates how the case is coded for the database.<sup>511</sup>

The 10<sup>th</sup> Medical Group has a Memorandum of Understanding with Memorial Hospital in Colorado Springs, Colorado, to provide rape kit exams through the services of Sexual Assault Nurse Examiner (SANE nurse).<sup>512</sup> In addition to performing the rape kit exam, Memorial Hospital will also treat any immediate injuries and prescribe medications to prevent sexually transmitted diseases

<sup>504</sup> *Id.*, See also Statement of Victim Advocate Coordinator, Exhibit 50, at 128.

<sup>505</sup> Statement of Victim Advocate Coordinator, Exhibit 352, at 3.

<sup>506</sup> Memorandum for Record, Interview with Anonymous Victim Support Group member, Exhibit 262.

<sup>507</sup> Memorandum for Record, Interview with Victim Support Group, Exhibit 167.

<sup>508</sup> Statement of Victim Advocate Coordinator, Exhibit 352, at 3.

<sup>509</sup> Telephonic Interview with Commander, 10th Security Forces Squadron, Exhibit 186.

<sup>510</sup> The morning-after pill is a contraceptive, not the drug RU-486. Statement of CASIE Program Manager, Exhibit 99, at 4; Statement of Officer from Medical Group, Exhibit 184, at 2; Statement of Male First-Class cadet CASIE/Rep, Exhibit 101, at 2. For additional information regarding the Academy's use of the morning-after pill, see Memorandum, Re: Addition of 'Plan B' as 'Morning After Pill' to Base Core Formulary, Exhibit 354.

<sup>511</sup> Statement of Officers from Medical Group, Exhibit 184 at 1-2; E-mail to Counseling Center Director, March 4, 2003, Exhibit 360.

<sup>512</sup> Memorandum of Agreement Between Academy and Memorial Hospital, Exhibit 404. Note that this is not an Academy-unique arrangement. Memorial Hospital has the only Sexual Assault Treatment Team in the local area and provides the same services for Fort Carson, Peterson Air Force Base and two other major local hospitals. Memorandum for Record, Telephonic Interview with SANE Nurse, Exhibit 379.

and pregnancy.<sup>513</sup> A sexual assault victim who is willing to have a rape kit exam performed is transported to Memorial Hospital by a victim advocate, who remains with the victim at the hospital during the exam.<sup>514</sup> Memorial Hospital began performing rape kit exams with SANE nurses approximately nine years ago and it currently has ten certified SANE nurses.<sup>515</sup> The use of Memorial Hospital's services has been related to the unique expertise and facilities available there, as described below.

A SANE nurse is a registered nurse who has advanced education and clinical preparation in forensic examination of sexual assault victims and is trained to offer sexual assault victims prompt, compassionate care and comprehensive forensic evidence collection.<sup>516</sup>

In addition to having specially qualified and experienced SANE nurses available to perform these exams, Memorial Hospital also has specialized equipment known as a colposcope. The colposcope is a microscope configured with a 35-millimeter camera which allows photographs of micro-tears in the genital area or other parts of the body which would be otherwise invisible to the naked eye.<sup>517</sup> These photographs may be relevant to the force element of a rape allegation.

The initiative by Air Force leadership to begin rape kit exams at the Hospital and/or the Cadet Clinic, while motivated by the desire to provide resources as quickly as possible, should take into account the need for trained staff with adequate proficiency as well as the need for specialized equipment. An additional consideration may be the enhanced privacy afforded cadets by having such procedures performed away from the Academy. Concerns about having rape kit exams performed at the Academy have been raised by the Air Force Surgeon General, 10<sup>th</sup> Medical Group personnel and others.<sup>518</sup>

<sup>513</sup> Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353 at 1.

<sup>514</sup> Statement of Victim Advocate Coordinator, Exhibit 50 at 4 and 25.

<sup>515</sup> Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353 at 1.

<sup>516</sup> SANE programs were developed throughout the United States to address problems with the medical-legal response to sexual assault victims in hospital emergency rooms. These include: 1) a lack of urgency by emergency room staff resulting in long waits for victims who must not eat, drink, shower or urinate until the exam is completed; 2) lack of training by physicians and nurses in performing evidentiary exams; 3) lack of proficiency because providers do not perform the procedures frequently enough to maintain proficiency; 4) reluctance by physicians to perform exams due to fear of being called to testify; 5) failure by emergency room staff to understand and be sensitive to the needs of the victim; and 6) failure by emergency room staff to gather and/or document all available forensic evidence. U.S. Department of Justice, Office for Victims of Crime Bulletin, "Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims," available at [http://www.ojp.usdoj.gov/ovc/publications/bulletins/sane\\_4\\_2001](http://www.ojp.usdoj.gov/ovc/publications/bulletins/sane_4_2001).

<sup>517</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 78.

<sup>518</sup> A letter dated April 16, 2003 from the Air Force Surgeon General to the General Counsel's Working Group expressed "serious concerns" about a possible recommendation that rape exams be performed at the 10<sup>th</sup> Medical Group. The letter states that it would be extremely difficult for the 10<sup>th</sup> Medical Group to provide the standard of care currently obtained in the community for rape exams. The Surgeon General stressed that extensive training is required for SANE nurses and that significant experience is needed to make these nurses credible witnesses during court testimony. He emphasized the high number of exams performed by Memorial Hospital and indicated that it was unlikely the number of cases at the Academy would be adequate to keep a SANE nurse from the 10<sup>th</sup> Medical Group proficient. Memorandum from USAF Surgeon General, Exhibit 378. See also, Memorandum for Record, Telephonic Interview with Physician, Cadet Clinic, Exhibit 174 (expressing concern about performing rape kits). See also Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353, at 2.

## 7. Chaplain Support

The Academy has thirteen chaplains of various faiths. None of the chaplains has any specialized training in dealing with sexual assault victims.<sup>519</sup> However, chaplains often see sexual assault victims and can offer confidentiality through the priest-penitent privilege.<sup>520</sup> The services provided by the chaplains primarily include counseling and referral to other support service providers both on- and off-base. Chaplains also occasionally provide transportation services for victims to off-base support service providers.<sup>521</sup>

At the Academy there are staff chaplains who are located at the chapel offices and each of the Groups in the Cadet Wing also has an assigned chaplain. The Group Chaplain's office is located in the dormitory in the area where the cadets from the assigned group are housed. Cadets from any Group are welcome to walk in or to schedule an appointment. One Group Chaplain reported that in the three years she has been assigned to the Academy she has seen thirteen sexual assault victims. Until recently, this chaplain had been the only female chaplain and the only African-American chaplain at the Academy.<sup>522</sup> Another female staff chaplain was assigned to the Academy in December 2002. She has seen eight sexual assault victims, three of which were basic cadet trainees.<sup>523</sup> Both female chaplains stated that the majority of the cadets they have seen did not report their assaults.<sup>524</sup>

Through a series of briefings and personal interactions, sexual assault victims are aware that confidential counseling services with the chaplains are available. At Basic Cadet Training (BCT), chaplains provide a briefing to make cadets aware that they are available and to describe generally the services that are available to them. In addition, chaplains provide a similar briefing to Fourth-Class cadets who voluntarily participate in a chapel outing known as "Doolie Retreat." Chaplains also provide a series of briefings to Third-Class cadets (sophomores) during a series of briefings at a six-week Academy exercise known as Global Engagement which is held at Jack's Valley, Colorado. The chaplains there advise cadets on how chaplains can assist them now as cadets and how chaplains assist commanders. In addition, Group Chaplains also conduct periodic briefings to squadrons on current "hot topics" and may include references to counseling services. Posters identifying each Group Chaplain, available services, and contact information are also posted in the dormitories.<sup>525</sup>

The chaplains do not appear to be knowledgeable about either the Air Force or the Academy victim assistance programs, beyond the existence of the CASIE Hotline and CASIE representatives.<sup>526</sup> Both female chaplains report that they have developed their own list of off-base resources. These two chaplains also report that they have had no training on the Air Force VWAP

<sup>519</sup> Memorandum for Record, Academy Senior Chaplain, Exhibit 351.

<sup>520</sup> The priest-penitent privilege is a privilege recognized in law which allows communications made by an individual to a clergyman as a formal act of religion or as a matter of conscience to remain confidential. See MCM, MIL. R. EVID. 503 (2002).

<sup>521</sup> Statement of Female Group Chaplain, Exhibit 32, at 2; Statement of Female Staff Chaplain, Exhibit 30, at 2; Off-Base Resource List, Exhibit 365.

<sup>522</sup> Statement of Female Group Chaplain, Exhibit 32, at 1.

<sup>523</sup> Statement of Female Staff Chaplain, Exhibit 30, at 1-2.

<sup>524</sup> Memorandum for Record, Summary of Chaplain Interviews, March 28, 2003, Exhibit 373; Statement of Female Staff Chaplain, Exhibit 30, at 2.

<sup>525</sup> Statement of Female Group Chaplain, Exhibit 32, at 2.

<sup>526</sup> See generally Statement of Female Group Chaplain, Exhibit 32; Statement of Female Staff Chaplain, Exhibit 30.

program and little training on the Academy's program. However, one of the female chaplains has engaged in significant self-study.<sup>527</sup>

## 8. Investigative Support

The Air Force Office of Special Investigations (AFOSI) and Security Forces are the two agencies with authority to investigate crimes at Air Force installations.<sup>528</sup> AFOSI is the primary investigative agency for sexual assault allegations at the Academy.<sup>529</sup> In addition to investigating allegations of sexual assault when the victim is willing to come forward, under the Academy's unique system of allowing victims to remain anonymous, AFOSI has provided "hypothetical" consultation services for victims who have not yet decided whether they want an investigation to occur. The victim or the victim advocate can discuss a "hypothetical" with AFOSI in which the facts of the assault are presented and the AFOSI provides the victim with information on what is likely to happen based on those facts.<sup>530</sup>

Security Forces is involved in two aspects with regard to direct support of sexual assault victims. First, Security Forces is responsible for the collection and maintenance of physical evidence related to a sexual assault. The second support role is mandated under Air Force Instruction 51-201, Chapter 7, which requires Security Forces to provide victims with a DD Form 2701 which makes them aware of their rights as victims and provides contact telephone numbers for information on victim assistance, investigation status, and prosecution status.<sup>531</sup> According to the Security Forces Squadron Commander, the Form would be provided by the initial responding patrolman.<sup>532</sup>

Since 1996, the Academy has had concurrent jurisdiction with the State of Colorado over offenses that occur on Academy property, meaning that either the Air Force or the State via local law enforcement authorities can respond to criminal activity on the installation.<sup>533</sup> In 1998, the Academy and the El Paso County Sheriff's Office entered into a memorandum of agreement dividing responsibilities between the Sheriff's Office and the Academy's law enforcement functions. Under the memorandum, the Academy has primary responsibility for responding to and investigating most offenses, including felonies, juvenile offenses and misdemeanors and petty offenses, other than those relating to acts of domestic violence committed by individuals not subject to the Uniform Code of Military Justice. Thus, this memorandum has the effect of placing primary responsibility on Academy law enforcement for investigation of sexual assaults upon cadets on Academy grounds.<sup>534</sup>

<sup>527</sup> Statement of Female Group Chaplain, Exhibit 32, at 2; Statement of Female Staff Chaplain, Exhibit 30, at 3.

<sup>528</sup> See this Report, Sections V(A) and (B), Air Force Office of Special Investigations and 10<sup>th</sup> Security Forces Squadron.

<sup>529</sup> Memorandum for Record, Former AFOSI Detachment Commander, Exhibit 178 at 1; Statement of Former AFOSI Detachment Commander, Exhibit 176, at 1. See also USAFA Instruction 51-201, ¶ 2.7.

<sup>530</sup> Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242; Memorandum for Record, Interview with Victim Support Group, Exhibit 137. Note that elsewhere in the Air Force this option for a confidential meeting in which the victim can opt to remain anonymous does not exist.

<sup>531</sup> Air Force Instruction 51-201, Figure 7.1.

<sup>532</sup> Summarized Statement, Commander, 10th Security Forces Squadron, Exhibit 178 at 5.

<sup>533</sup> Staff Summary Sheet, Re: Academy Legislative Jurisdiction, Exhibit 252, (indicating acceptance by Secretary of the Air Force of concurrent jurisdiction over the Academy grounds from the State of Colorado).

<sup>534</sup> Memorandum of Agreement Between the United States Air Force Academy and El Paso County Sheriff's Office, Exhibit 363. The memorandum of agreement also specifies certain areas of Academy property where the El Paso

## 9. Family Support Center

Air Force Instruction 51-201 identifies the Family Support Center as a key agency in the delivery of victim support services.<sup>535</sup> Despite its name, the Family Support Center provides services to all military members, married or single, including cadets. The Family Support Center has significant resources materials and knowledge of available resources to assist victims. However, the Family Support Center has had no involvement with the Sexual Assault Services Committee, though it is a member of the Victim and Witness Assistance Council organized by the 10<sup>th</sup> Air Base Wing Legal Office.<sup>536</sup>

## 10. Off-Base Support

Under Air Force Instruction 51-201, off-base victim support services are one component of the Air Force Victim Witness Assistance Program.<sup>537</sup> There are a few off-base agencies that provide support services to victims within proximity of the Academy. These are not widely known to cadet victims, CASIE representatives, or victim advocates. Statements from CASIE representatives and victim advocates suggest that victims are not referred to off-base agencies unless the victims specifically ask, and even then they may be discouraged from using these resources.<sup>538</sup>

### (a) TESSA

TESSA (an acronym for Trust, Education, Safety, Support, and Action) is a private, non-profit organization which provides support services for victims of domestic violence and sexual assault in Colorado Springs. These services include, but are not limited to, counseling, victim support groups, and assistance in obtaining restraining orders.<sup>539</sup> TESSA provides services to approximately 800 victims annually from the county area. Over the last twelve years, the TESSA Executive Director estimates it has seen thirty-eight Academy cadets who alleged they were sexual assault victims.<sup>540</sup> According to the Director of Clinical Services for TESSA, the cadets they have counseled often report that they come to TESSA because TESSA offers complete confidentiality.<sup>541</sup>

### (b) Local Civilian Law Enforcement Victim Services

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County Sheriff's Office, Colorado Highway Patrol, or Colorado Springs Police Department will serve as primary responders, but these do not include the areas where the Academy dormitories, academic buildings or athletic training facilities are located. *Id.*

<sup>535</sup> Air Force Instruction 51-201, ¶ 7.10.12 and Figure 7.1.

<sup>536</sup> Memorandum for Record, Interview with Director, Family Support Center, Exhibit 374.

<sup>537</sup> See Air Force Instruction 51-201, Section 7D, noting Figure 7.3, ¶¶ 7.10.12, 7.10.13, 7.16.5. See also DoD Instruction 1030.2, ¶ 6.1.4.

<sup>538</sup> Statement of Victim Advocate Coordinator, Exhibit 50 at 41-43; Statement of Two First-Class Female Cadets, Exhibit 136; Statement of Counseling Center Director, Exhibit 33, at 10. See generally Statement of CASIE Program Manager, Exhibit 99, at 4-5; and Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1.

<sup>539</sup> Brochure, Trust, Education, Safety, Support, and Action, Exhibit 366.

<sup>540</sup> Matrix Prepared by TESSA of Sexual Assault Reports by Academy Cadets, Exhibit 350. At the request of the Working Group, TESSA contacted several of the cadets it has counseled to see if any would be willing to be interviewed; none were.

<sup>541</sup> Memorandum for Record, Interview with TESSA Director of Clinical Services, Exhibit 243, at 1.

The Colorado Springs Police Department is listed in USAFA Instruction 51-201 as one of the victim support service agencies.<sup>542</sup>

However, the Colorado Springs Police Department stopped handling Academy cases approximately eight or nine years ago. Instead, the services are now provided by the El Paso County Sheriff's Office, which is not listed in USAFA Instruction 51-201.<sup>543</sup>

The El Paso County Sheriff's Office has a victim advocacy program known as El Paso County Victims' Services. It provides victims with information on referrals and their victim compensation fund program. The Sheriff's Office refers victims to TESSA or to local private practice counselors experienced in dealing with trauma and sexual assault. The coordinator for the El Paso County Victims' Services stated that they have not seen any cadets as victims, but believe cadets are aware of their services because there have been five cases in which cadets brought civilian victims to the Victims' Services office.<sup>544</sup>

#### (c) Other Off-Base Victim Support Services

There are other private victim support services located near the Academy which could be used to supplement existing sources for providing information and assistance to sexual assault victims. One is the Rape Assistance and Awareness Program (RAAP) in Denver, Colorado. It provides a Hotline, victim advocates, counseling sessions, and an extensive website.<sup>545</sup> One of the chaplains at the Academy makes victims aware of this resource, though not listed in USAFA Instruction 51-201.<sup>546</sup>

The Miles Foundation is not identified as a victim support resource in USAFA Instruction 51-201. Nevertheless, it is an active private, non-profit organization based in Newton, Connecticut. The Miles Foundation has a toll-free twenty-four hour Advocacy Helpline (1-877-570-0688) for victims of interpersonal violence associated with the military. Part of the information includes referral to local victim support agencies such as TESSA and Survivors In Service United (SISU).<sup>547</sup>

Survivors In Service United (SISU) is a sister organization to The Miles Foundation and is also not identified as a resource in USAFA Instruction 51-201. SISU provides direct support, information, and victim advocate services; the closest SISU is in Boulder, Colorado.<sup>548</sup>

#### 11. The Academy's Inspector General (IG)

In the Air Force, the Inspector General is the grievance channel to present complaints of wrongdoing when no other means of redress or appeal exist.<sup>549</sup> Anyone may present a complaint to the Inspector General.<sup>550</sup> The Inspector General has broad latitude to investigate complaints about

<sup>542</sup> USAFA Instruction 51-201, ¶ A2.3

<sup>543</sup> Memorandum for Record, Interview with Victim Advocate, Colorado Police Department, Exhibit 364.

<sup>544</sup> Memorandum for Record, Interview with Victim Assistance Program Coordinator, El Paso County Sheriff's Office, Exhibit 372.

<sup>545</sup> Website Information, Rape Assistance and Awareness Program, Exhibit 368, available at <http://www.raap.org>.

<sup>546</sup> Statement of Female Group Chaplain, Exhibit 32, at 2.

<sup>547</sup> Memorandum for Record regarding The Miles Foundation, Exhibit 361.

<sup>548</sup> *Id*

<sup>549</sup> AFD 90-3, ¶ 4.2.

<sup>550</sup> Air Force Instruction 90-301, ¶1.14.7.

Air Force operations, organizations, functions or personnel, but does not investigate matters that are normally addressed through other established grievance or appeal channels unless there is evidence those channels mishandled the matter or the process.<sup>551</sup> Reprisal is a key area of investigation by the Inspector General.<sup>552</sup> Under the Inspector General system, the identity of a complainant may be protected under the Privacy Act and the Freedom of Information Act.<sup>553</sup>

The Inspector General at each installation operates independently and reports directly to the installation commander.<sup>554</sup> The Academy has an Inspector General, but the Office of the Inspector General is not manned to take into account the 4,000 Academy cadets.<sup>555</sup> The current Inspector General stated that if the manpower assessment for his office were to include the cadets, the number of positions in the Inspector General's office would remain the same, but the Inspector General position would be filled by a colonel rather than a lieutenant colonel.<sup>556</sup>

Both the immediate past and current Inspectors General have made attempts to make contact with the cadet population but there has not been a lot of regular cadet interaction.<sup>557</sup> The immediate past Inspector General indicated that prior to her arrival, there was no Inspector General briefing to Basic Cadet Training trainees. She began giving briefings to the trainees in 2002 about the role and availability of the Inspector General's office.<sup>558</sup> The Inspector General's office also briefed the Cadet Wing leadership for the new 2002-2003 year cadet leaders, again on the role and availability of the Inspector General's office.<sup>559</sup> There were no briefings to the whole Cadet Wing about the Inspector General and its duties and its charter.<sup>560</sup> This may have resulted in a general lack of awareness among the Cadet Wing of the availability of the Inspector General as an avenue to make complaints.<sup>561</sup>

Interviews showed that there is no Inspector General position within the Cadet Wing, despite the fact that the wing is designed to mirror an active duty wing. The past Inspector General indicated that there had been a cadet Inspector General position as of three years ago, but the position was removed, in part because the Inspector General believed a cadet would not be able to

<sup>551</sup> Air Force Instruction 90-301, ¶ 1.40.1. For example, a military member making an initial complaint of sexual harassment to the Inspector General would be referred to the Military Equal Opportunity Office. Once the member exhausts the grievance process available through the Military Equal Opportunity Office, the member could complain to the Inspector General if the member believed the grievance was mishandled. But note that mere dissatisfaction or disagreement with the outcome or findings or an alternative grievance or appeal process is not a sufficient basis to warrant an IG inspection. Air Force Instruction 90-310, ¶ 1.40.1.2.

<sup>552</sup> Statement of Inspector General, USAFA, Exhibit 356, at 4.

<sup>553</sup> Inspectors General must make every effort to protect the identity of complainants and may release the name of a complainant only on an official need-to-know basis. Air Force Instruction 90-301, ¶¶ 2.3.1, 2.3.2.

<sup>554</sup> Air Force Instruction 90-301, ¶ 1.15.1.

<sup>555</sup> Statement of Former Academy Inspector General, Exhibit 237 at 3; Statement of Inspector General, USAFA, Exhibit 356, at 1.

<sup>556</sup> Statement of Inspector General, USAFA, Exhibit 356, at 1.

<sup>557</sup> See generally, Statement of Former Academy Inspector General, Exhibit 237 and Inspector General, USAFA, Exhibit 356 (the whole Cadet Wing is not briefed about the IG and its duties and charter).

<sup>558</sup> Statement of Former Academy Inspector General, Exhibit 237 at 2. The former Inspector General stated that prior to her arrival, cadets were aware of the Inspector General's office through posters, briefings to Cadet Wing leadership during their planning period, and from the AOCs and MTLs who had also receive a briefing from the Inspector General.

<sup>559</sup> Statement of Inspector General, USAFA, Exhibit 356, at 2.

<sup>560</sup> *Id.*

<sup>561</sup> See Inspector General, USAFA, Exhibit 356, at 2. (He talked to some cadets in the fall and they did not know the Inspector General existed.)

perform inquiries as part of that function.<sup>562</sup> The Air Force Inspector General is working with the Academy to determine whether it would be prudent to re-establish a cadet Inspector General function.<sup>563</sup>

The current Inspector General reported that three sexual assault victims have come to the Inspector General's office in the last two years, but only one provided information on how the system failed her,<sup>564</sup> which is necessary to proceed with an investigation.<sup>565</sup>

## 12. The Military Equal Opportunity (MEO) Office

The Military Equal Opportunity (MEO) office runs the Equal Opportunity Treatment program at the base, Major Command and Headquarters levels. A key goal of the Equal Opportunity Treatment program is to eliminate unlawful discrimination against military personnel based on race, color, religion, sex, or national origin.<sup>566</sup> Under Air Force Instruction 36-2706, the base-level MEO office has the responsibility of processing and resolving complaints of unlawful discrimination and sexual harassment by military members, including cadets, and others.<sup>567</sup> Despite this requirement, the 10<sup>th</sup> Air Base Wing MEO office at the Academy has not provided this service to cadets with complaints of cadet-on-cadet sexual harassment, but has processed complaints of cadets against active duty military personnel. According to the current Chief of the MEO office, cadets with complaints of cadet-on-cadet sexual harassment would be referred to the Center for Character Development.<sup>568</sup>

In addition to the responsibility to handle complaints, the 10<sup>th</sup> Air Base Wing's Military Equal Opportunity office is required under Air Force Instruction 36-2706 to conduct training on Human Relations Education, provide key personnel briefings on the program, and to conduct a Climate Assessment Program comprised of Unit Climate Assessments, "Out and About" Climate Assessments, and Wing or Installation Climate Assessments.<sup>569</sup> However, the interaction between the 10<sup>th</sup> Air Base Wing MEO office and Academy is limited to the following: climate assessments of active duty permanent party members of the 34<sup>th</sup> Training Wing, and on a voluntary basis, DoD civilians attached to the 34<sup>th</sup> Training Wing; "out and about" visits with the cadets; and conducting a mandatory initial MEO training at Basic Cadet Training for all new trainees. The Chief of the MEO office explained that he was given guidance by personnel at the Center for Character Development that the 34<sup>th</sup> Training Wing "owns" all climate assessments regarding the Cadet Wing.

<sup>562</sup> Statement of Former Academy Inspector General, Exhibit 237, at 2.

<sup>563</sup> Comment from Air Force Inspector General (Working Group member).

<sup>564</sup> Statement of Inspector General, USAFA, Exhibit 356, at 4.

<sup>565</sup> Air Force Instruction 90-301, Table 2.9, Rule 3 (if the complainant refuses to provide sufficient evidence to properly conduct the complaint analysis, the complaint will be dismissed).

<sup>566</sup> Air Force Instruction 36-2706, ¶ 1.1.

<sup>567</sup> The preamble of Air Force Instruction 36-2706 on the Military Equal Opportunity Program indicates that the Instruction applies to all personnel who are subject to the Uniform Code of Military Justice, which includes cadets. See generally, *id.* at Chapter 4.

<sup>568</sup> Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205, at 1-2. The Director of the Center for Character Development has indicated he is not surprised about the existence of sexual harassment at the Academy, but does not know the extent to which it occurs at the Academy. Statement of the Director, Center for Character Development, Exhibit 204, at 5. See Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2 (describing how such incidents are handled by cadet Human Relations Officers).

<sup>569</sup> See generally, Air Force Instruction 36-2706 at Section 2E, Table 2.2, and Chapter 3.

Therefore, the 10<sup>th</sup> Air Base Wing MEO office is not involved in conducting any climate assessments of the Cadet Wing.<sup>570</sup>

The Instruction also requires trained MEO instructors to conduct a minimum two hour training session for Academy cadets on MEO within thirty days of the cadets' arrival on station.<sup>571</sup> According to statements, the 10<sup>th</sup> Air Base Wing MEO office provides this training to trainees at the Academy during Basic Cadet Training.<sup>572</sup>

The 10<sup>th</sup> Air Base Wing MEO office also provides assistance in training the cadet Human Relations Education Officers (HREOs). In addition, a trained MEO noncommissioned officer is assigned to the Center for Character Development, and oversees the curriculum provided to HREOs in order to train Fourth-Class cadets in human relations.<sup>573</sup>

#### **H. Statistics on Sexual Assault**

The Working Group attempted to identify all known allegations of sexual assault involving a cadet victim or cadet assailant while the victim or assailant was enrolled at the Academy from January 1, 1993 through December 31, 2002. We identified allegations falling within the Academy's definition of "sexual assault" that were derived from or reflected in a written record known to the Academy prior to January 1, 2003.<sup>574</sup>

##### **I. All Allegations of Sexual Assault**

For purposes of overall analysis, we considered all allegations meeting the above criteria as long as the *victim's* allegation fell within the Academy's definition of sexual assault, regardless of whether the actual nature of the act could be ascertained, and regardless of the ultimate substantiation (or lack thereof) of the allegation. We identified 142 such allegations, or an average of approximately fourteen each year over the ten-year period examined. Some were bare reports to CASIE with little or no information on the incident. Chart 1 shows these allegations broken down by the year in which the incident was alleged to have occurred:

<sup>570</sup> Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205, at 1.

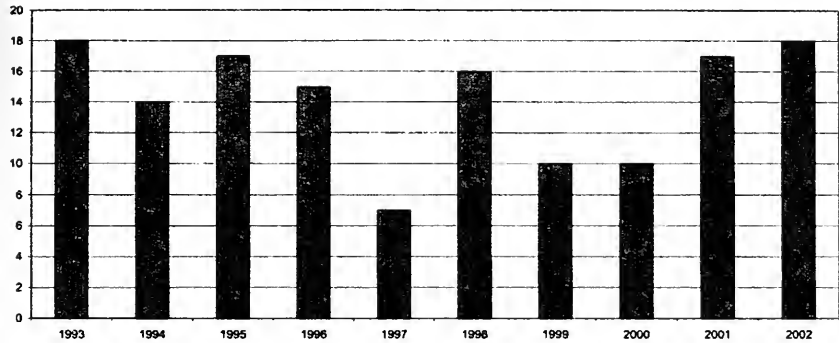
<sup>571</sup> See generally, Air Force Instruction 36-2706 at Section 2E, at Table 2.2.

<sup>572</sup> Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205.

<sup>573</sup> *Id.*

<sup>574</sup> Allegations unknown to the Academy prior to January 1, 2003 were excluded from the Working Group's analysis in order to focus on *Academy responses* to sexual assault over a ten-year period. This limitation excludes one allegation identified in a letter to the Superintendent and two allegations identified by the media. Additionally, the allegations considered over the ten-year period may not account for those allegations known to congressional offices, allegations made to civilian counseling centers, or allegations reported to only an Academy chaplain with the expectation of confidentiality. Indicators suggest that some of these allegations overlap with each other or with previously identified allegations.

CHART 1: Allegations of Sexual Assault (CY of Incident)  
(Including All Allegations, Regardless of Substantiation)



\*The Academy's definition of sexual assault can cover some acts that would not normally be considered crimes of sexual assault in the Air Force or civilian criminal justice systems. See USAFA Instruction 51-201, ¶ 2.2.

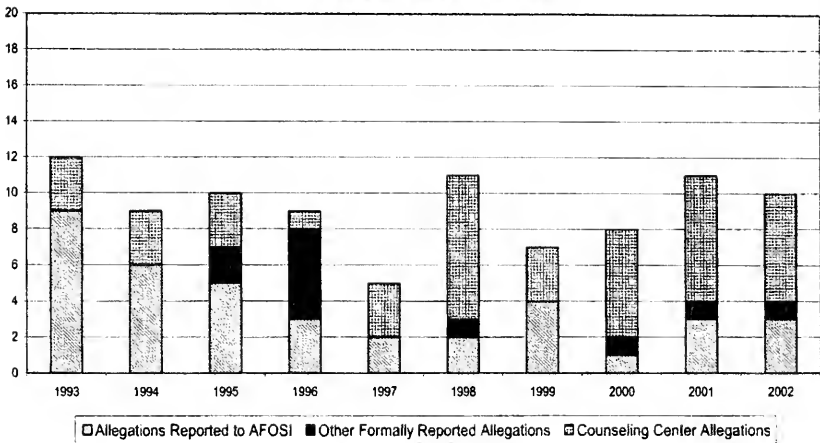
The 142 allegations involve 104 male cadet suspects, which represent 0.7% of the approximately 14,160 male cadets at the Academy from 1993-2002.<sup>575</sup> The 116 female cadet victims represented in these allegations account for 4.6% of the approximately 2,545 female cadets at the Academy from 1993-2002.<sup>576</sup> Among the 142 allegations, ninety-three likely involved both a cadet victim and a cadet suspect.<sup>577</sup> These ninety-three allegations include seven allegations investigated by AFOSI in which the victim was unable to identify the assailant. However, as the alleged incidents occurred in or near the cadet dorms, or in a cadet training area, the assailants were assumed to be cadets. With that assumption, Chart 2 depicts the maximum number of known cadet-on-cadet allegations by the year in which they were alleged to have occurred:

<sup>575</sup> Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4, and Data Spreadsheet, USAFA/XPR, Exhibit 387.

<sup>576</sup> Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4, and Data Spreadsheet, USAFA/XPR, Exhibit 387.

<sup>577</sup> Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4.

CHART 2: Number of Cadet-on-Cadet Allegations (CY of Incident)  
(Including All Allegations, Regardless of Substantiation)



\*The Academy's definition of sexual assault can cover some acts that would not normally be considered crimes of sexual assault in the Air Force or civilian criminal justice systems. See USAFA Instruction 51-201, ¶ 2.2.

The number of cadet-on-cadet allegations is relevant because it represents the potential scope of the sexual assault issue that is within the most immediate control of the Academy. While the Academy may be less able to control the circumstances of either non-cadet assailants of cadet victims or cadet assailants of non-cadet victims (especially if not occurring at the Academy), most or all of the cadet-on-cadet allegations fall within the purview of the Academy.

It is significant that little is known about the majority of the 142 allegations, including whether they could be substantiated, their amenability to prosecution, or even in some instances whether they relate to acts that would be considered crimes. The only allegations for which such information could be ascertained are those that either resulted in investigations or contained sufficient information to trigger an investigation.<sup>578</sup> The Working Group identified sixty-one such allegations that related to acts that would normally be considered crimes of sexual assault and which were investigated in some manner.<sup>579</sup>

<sup>578</sup> For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, see this Report, Section VI.F., Review of Sexual Assault Cases.

<sup>579</sup> The sixty-one allegations include twenty-six rape allegations and thirty-five allegations other than rape. (Data of Sexual Assault Allegations (All AFOSI and Command Allegations), Exhibit 383, Attachment 3.) The sixty-one allegations include fifty-seven allegations investigated by AFOSI and four allegations investigated by some other means. *Id.* (The fifty-seven allegations investigated by AFOSI are derived from fifty-three AFOSI records (some of

## 2. Investigated Cases of Cadet-on-Cadet Incidents

Of the sixty-one sexual assault allegations that led to investigations, forty involved "cadet-on-cadet" incidents that involved both a cadet suspect and a cadet victim (the remaining twenty-one involved either a non-cadet suspect or a non-cadet victim).

Of the forty investigated cadet-on-cadet allegations pertaining to incidents occurring between January 1, 1993 and December 31, 2002, nineteen (or 48%) involved allegations of rape.<sup>580</sup> Of these nineteen, three were recanted; one other did not identify a suspect; seven others were not viable for criminal charges; and three are currently under investigation. Of the remaining five rape allegations, criminal charges were initiated in two of the five (including one for which charges were dismissed after an Article 32 hearing and one that resulted in an acquittal at a court-martial). Our analysis indicated that the Academy's decision not to pursue charges in the other three allegations appeared to be due to problematic factual aspects.<sup>581</sup> We found one determination to be within reasonable discretion, and could not make a determination on the other two.<sup>582</sup> One cadet suspect subsequently resigned in lieu of an involuntary disenrollment. One suspect received cadet discipline. No action was taken as to the third cadet suspect.<sup>583</sup>

The forty cadet-on-cadet investigated allegations included twenty-one (or 53%) that were allegations of sexual assault other than rape.<sup>584</sup> Of these twenty-one, three did not identify a suspect, three others were not viable for criminal charges, and one is currently under investigation. Of the remaining fourteen allegations other than rape, criminal charges were initiated in eleven of the fourteen (including six that resulted in Article 15 nonjudicial punishment, four for which charges were dismissed after an Article 32 hearing, and one that resulted in a court-martial conviction). Our analysis indicated that the Academy's decision not to pursue charges in the other three allegations appeared to be due to problematic factual aspects of those allegations.<sup>585</sup> We disagreed with the decision not to pursue charges in one case; found one determination to be within reasonable discretion; and could not make a determination in the other.<sup>586</sup> The Academy initiated disenrollment actions against the cadet suspects identified in these three cases for which criminal charges were not initiated.<sup>587</sup>

Of the forty cadet-on-cadet investigated allegations (including those in which rape and other sexual assaults were alleged), twenty-one (or 53%) involved Fourth-Class cadets as victims

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which identified multiple victims) involving incidents alleged to have occurred from January 1, 1993 to December 31, 2002.)

<sup>580</sup> Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

<sup>581</sup> For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, see this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

<sup>582</sup> See this Report, Section VI.F., Review of Sexual Assault Cases.

<sup>583</sup> Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

<sup>584</sup> Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

<sup>585</sup> For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, see this Report, Section V., Leadership Issues Pertaining to Sexual Assault at the Academy.

<sup>586</sup> See this Report, Section VI.F., Review of Sexual Assault Cases.

<sup>587</sup> One of these disenrollments refers to one of the cadets referenced in the paragraph above concerning cadet-on-cadet rape, as there were two separate allegations, one of rape against one victim, and sexual assault other than rape against another.

(although only 29% of the Cadet Wing is comprised of Fourth-Class cadets).<sup>588</sup> Twenty-two (or 55%) occurred in the cadet dorms. Sixteen (or 40%) involved the use of alcohol by the victim, suspect, or both. Fourteen (or 35%) of the alleged assaults commenced while the victim was either unconscious due to alcohol consumption or asleep. Six (or 15%) of the allegations were reported more than six months after the alleged incident.

### 3. Cadet Victims

Of the sixty-one investigated allegations, forty-six involved cadet victims, including three male cadets.<sup>589</sup> Of these forty-six victims, twenty-one (or 46%) were Fourth-Class cadets<sup>590</sup> (although only 29% of the Cadet Wing is comprised of Fourth-Class cadets).<sup>591</sup> Of the forty-three female victims: five (or 12%) were varsity athletes,<sup>592</sup> while 33% of all female cadets are varsity athletes;<sup>593</sup> eight (or 19%) received either an administrative or medical turnback;<sup>594</sup> and eight (or 19%) are current cadets or currently on turnback. Excluding the eight female victims who are current cadets or currently on turnback, of the remaining thirty-five female victims: twenty (or 57%) graduated,<sup>595</sup> compared to an average graduation rate of 71% among all female cadets;<sup>596</sup> seven (or 20%) voluntarily separated from the Academy;<sup>597</sup> and eight (or 23%) were involuntarily discharged or resigned in lieu of an administrative discharge (although not necessarily for reasons related to the alleged assault).<sup>598</sup>

### 4. Cadet Suspects

The sixty-one investigated allegations included fifty-five in which the victim alleged that his or her assailant was a cadet.<sup>599</sup> From these fifty-five allegations, forty-two cadet suspects were identified by name, including one female cadet.<sup>600</sup> Of these forty-two cadet suspects: four (or 10%) were alleged to have assaulted more than one victim;<sup>601</sup> and fifteen (or 36%) were First-Class cadets,<sup>602</sup> although First-Class cadets comprise only 23% of the Cadet Wing.<sup>603</sup> The percentage of

<sup>588</sup> Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

<sup>589</sup> Data of Sexual Assault Allegations (Cadet Victims), Exhibit 383, Attachment 5. The remaining fifteen investigations involved non-cadet victims. Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4. The forty-six allegations by cadet victims include twenty-one rape allegations and twenty-five allegations other than rape. *Id.*

<sup>590</sup> *Id.*

<sup>591</sup> Data Spreadsheet, USAFA/XPR, Exhibit 387, at 6.

<sup>592</sup> Data of Sexual Assault Allegations (Cadet Victims), Exhibit 383, Attachment 5.

<sup>593</sup> Data Spreadsheet, USAFA/XPR, Exhibit 387, at 5.

<sup>594</sup> Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

<sup>595</sup> *Id.*

<sup>596</sup> Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7. For the classes of 1993 through 2002, the attrition rate for female cadets was an average of 28.8%. (1993 – 39.1%; 1994 – 29.8%; 1995 – 34.7%; 1996 – 22.8%; 1997 – 36.4%; 1998 – 25.1%; 1999 – 33.5%; 2000 – 23.7%; 2001 – 19.4%; 2002 – 23.2%). *Id.* Although the attrition rate by class does not map precisely to the time period by calendar year, the ten-year average is assumed to approximate the actual value.

<sup>597</sup> Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

<sup>598</sup> *Id.*

<sup>599</sup> Data of Sexual Assault Allegations (Cadet Suspects), Exhibit 383, Attachment 7. The remaining six allegations involved non-cadet suspects. The fifty-five allegations in which a cadet suspect is identified include twenty-four rape allegations and thirty-one allegations other than rape. *Id.*

<sup>600</sup> *Id.*

<sup>601</sup> *Id.*

<sup>602</sup> Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

male cadet suspects who were recruited athletes,<sup>604</sup> intercollegiate athletes, and graduates of the Academy Preparatory School roughly reflected the overall composition of male cadets from 1993 through 2002.<sup>605</sup>

Of the forty-two cadet suspects identified by name: six (or 14%) were court-martialed for rape, sodomy, indecent assault or related crimes (five of these were involuntarily discharged after convictions, and one graduated after he was acquitted);<sup>606</sup> and eight (or 19%) received an Article 15 (three of these resigned, four were involuntarily discharged, and one graduated).<sup>607</sup> One cadet suspect is still at the Academy. Among the other forty-one cadet suspects no longer at the Academy, twelve (or 29%) were involuntarily discharged,<sup>608</sup> one (or 2%) voluntarily separated,<sup>609</sup> nine (or 21%) resigned in lieu of criminal prosecution or administrative action,<sup>610</sup> and nineteen (or 45%) graduated from the Academy.<sup>611</sup>

We found no consistent mechanisms in effect at the Academy for reliably comparing Academy sexual assault data with other Academies, civilian schools or other institutions. The Academy's unique definition of sexual assault and its unique confidential reporting process make reliable comparisons difficult.

### *I. Social Climate Surveys*

Since the 1991-1992 Academic Year,<sup>612</sup> the Academy has administered to cadets an annual Social Climate Survey. The primary purpose of the survey is to assess six climate factors: race, gender, intercollegiate status, religion, discrimination against majority,<sup>613</sup> and fear of reprisal.<sup>614</sup> The survey also contains three additional sections addressing: 1) alcohol; 2) harassment and discrimination (which is closely linked to the gender climate factor); and 3) sexual assault.<sup>615</sup> The survey is administered by the Academy's Institution Research Division ("Research Division"),<sup>616</sup> with assistance from the Center for Character Development ("the Center") and the Department of

<sup>603</sup> Data Spreadsheet, USAFA/XPR, Exhibit 387, at 6.

<sup>604</sup> Recruited athletes are high school athletes contacted by an Academy coach about the potential of participating in an intercollegiate athletic program.

<sup>605</sup> Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. Eleven (or 28%) were recruited athletes (24% of all male cadets are recruited athletes); five of the forty-two cadet suspects (or 13%) were varsity athletes (19% of all male cadets are varsity athletes); and nine (or 23%) were graduates of the Academy Preparatory School (20% of all male cadets are graduates of the Prep School). Given the small number of cadet suspects analyzed, these percentage differences do not appear to be significant. *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> Data of Sexual Assault Allegations (Cadet Suspects), Exhibit 383, Attachment 7

<sup>608</sup> *Id.*

<sup>609</sup> *Id.*

<sup>610</sup> *Id.*

<sup>611</sup> *Id.* For a discussion of the disposition of allegations against cadet suspects, see this Report, Section VI.F., Review of Sexual Assault Cases.

<sup>612</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105<sup>th</sup> Annual Convention of the American Psychological Association (August 16, 1997). Exhibit 49, at 11.

<sup>613</sup> This factor attempts to measure "reverse discrimination."

<sup>614</sup> Summarized Group Discussion of Social Climate Surveys, Exhibit 62, at 1.

<sup>615</sup> *Id.*

<sup>616</sup> The Institutional Research Division is also referred to as "XPR" or "RRER" in reports on the surveys.

Behavioral Sciences and Leadership ("Behavioral Sciences and Leadership"), which includes the Cadet Counseling Center.<sup>617</sup>

# I. History of the Social Climate Surveys.

The Working Group was unable to locate information on Social Climate Surveys administered in 1991 or 1992.<sup>618</sup> From 1993-1995, the survey was administered each Spring/Summer.<sup>619</sup> During those years, the Research Division published a report after each survey that summarized the results and expressed generalized observations about the meaning of those results.<sup>620</sup> The summary report appears to have been discontinued after the 1995 survey.

In 1996, survey administration covering the academic year switched to the Fall.<sup>621</sup> This led to two surveys in calendar year 1996, a Spring survey covering Academic Year 1995-1996, and a Fall Survey covering Academic Year 1996-1997. The Spring 1996 Survey was administered by the Research Division, and the Center was the office of primary responsibility for both the content and results of the survey.<sup>622</sup> This survey appears to have been the first to have included questions on sexual assault.<sup>623</sup> We were unable to locate any results from that survey.

The Fall 1996 Survey included questions prepared by a process action team assessment subcommittee at the request of Lt Gen Stein. The survey was administered by the Center, which was also the office of primary responsibility for the social climate and harassment/discrimination components of the survey. Questions on sexual assault were prepared by the Department of Behavioral Sciences and Leadership. The results of the social climate portion of the survey were co-briefed by the Research Division and the Center.<sup>624</sup> The alcohol results were included in a December 1996 briefing proposing a "Cadet Alcohol Program."<sup>625</sup> The results of the sexual assault portion of the survey were summarized but do not appear to have been briefed.

The 1997 Survey was once again administered by the Center, with the Center responsible for social climate and harassment questions and results, and the Department of Behavioral Sciences and Leadership responsible for sexual assault questions and results.<sup>626</sup> The 1997 questions were the same as those asked in the Fall 1996 Survey.<sup>627</sup> The 1997 Survey included several cadet focus groups,<sup>628</sup> and comments from both individual respondents and focus groups were compiled and retained. In addition, the Research Division prepared a "factor and reliability analysis" for the six

<sup>617</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2.

<sup>618</sup> Moreover, according to leadership from the Research Division, the Center, and Behavioral Sciences and Leadership, much of the "raw data" (i.e., the actual responses provided by cadets) from surveys prior to 1998 no longer exists.

<sup>619</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 1.

<sup>620</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53. The Survey administered in Academic Year 93-94 appears to have been given only to two classes. *Id.*

<sup>621</sup> *Id.*

<sup>622</sup> *Id.* (AY 1996-1997, cover memorandum).

<sup>623</sup> *Id.* The Center is also referred to as "CWC" in reports.

<sup>624</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105<sup>th</sup> Annual Convention of the American Psychological Association (August 16, 1997), Exhibit 49, at 11.

<sup>625</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53. The recipient of the briefing is not identified.

<sup>626</sup> *Id.* at AY 1996-1997, Attachment 4.

<sup>627</sup> *Id.* at AY 1997-1998, Cover Memorandum.

<sup>628</sup> *Id.* at AY 1996-1997, Attachment 1 and AY 1997-1998, Attachment 1.

<sup>629</sup> *Id.* at AY 1997-1998, Attachment 4.

climate factors. The sexual assault results were included in a 1998 briefing to Academy Leadership.<sup>629</sup>

The 1998 Survey was administered by the Center and retained the same functional responsibilities as the 1997 Survey for the areas of Climate Factors, Harassment/Discrimination, and Sexual Assault.<sup>630</sup> We were unable to determine whether the alcohol results were provided to anyone. The 1998 Survey included multiple changes to the questions, including fewer social climate questions, additional alcohol questions, and substantive changes to the sexual assault questions. The Climate Factors, which incorporated the Harassment/Discrimination results, were co-briefed by the Center and the Research Division to the Training Group Commander and the Commandant of Cadets.<sup>631</sup> Sexual Assault and Alcohol results do not appear to have been briefed.

After 1998, survey administration switched back from the Fall to the Spring semester. As a result, no survey was administered in calendar year 1999.<sup>632</sup> The functional offices for the 2000, 2001, and 2002 Surveys remained as they had been in 1998, with the Center responsible for the Climate Factors and Harassment/Discrimination and the Cadet Counseling Center responsible for Sexual Assault. As in prior years, there was no indication that the Alcohol results were being provided to or analyzed by anyone. The Cadet Counseling Center substantially rewrote the Sexual Assault questions for the 2002 survey.<sup>633</sup> As discussed below, the Climate Factors and Harassment/Discrimination results were briefed in 2001, but not in 2000 or 2002. Sexual Assault results were not briefed in 2000 or 2001, but results from the 2002 Survey were provided to the Superintendent at his request.<sup>634</sup> Alcohol results do not appear to have been briefed in any of these years.

## 2. Questions Regarding the Validity of Recent Surveys.

Several concerns have been raised over the validity of the administration and results of recent climate surveys.<sup>635</sup> (Most witnesses interviewed appear to use the term to indicate whether the survey was "useful" or whether the results were "trustworthy.") Representatives from the Research Division, the Center, and the Department of Behavioral Sciences and Leadership indicated that the results of the 1998 and 2000 surveys were highly suspect because the low response rate was not representative of the cadet population.<sup>636</sup> These representatives questioned the results of the

<sup>629</sup> The 1998 briefing is discussed in more detail under the section that follows, which addresses the sexual assault portion of the climate surveys.

<sup>630</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, Cover Memorandum).

<sup>631</sup> E-mail from Deputy Director, Center for Character Development to Working Group, April 22, 2003, Exhibit 206.

<sup>632</sup> The Academic Year 1998-1999 Survey was nominally administered in late 1998 (although there is anecdotal evidence the survey was administered during the first few days of 1999, the year on the survey is 1998) (Academy Climate Survey Data, AY 1993-2002, Exhibit 53, (AY 1998-1999, Attachment 1)), and the Academic Year 1999-2000 Survey was administered in early 2000.

<sup>633</sup> Academy Climate Survey Data, AY 1993-2002, (AY 2001-2002, cover memorandum), Exhibit 53. The changes in questions make comparisons with prior years' results problematic.

<sup>634</sup> Statement of Director, Cadet Counseling Center, Exhibit 47, at 11-12.

<sup>635</sup> See, e.g., Background Paper on USAFA Sexual Assault Program Surveys 1998 to 2003, Exhibit 207 (1998, 2000, 2001, and 2002 survey results were all "considered invalid"); Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 14.

<sup>636</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2-3.

2001 and 2002 because of incentives given to cadets to complete the surveys during these years and some evidence cadets did not take them seriously.<sup>637</sup>

In order to assess the degree to which portions of the recent climate surveys might be invalid, scientifically or otherwise, we forwarded the available information pertaining to the administration and analysis of the recent climate surveys to the Air Force Personnel Center (AFPC) for review. The statisticians at the Personnel Center were asked to provide an opinion as to: 1) whether the climate surveys contained information upon which a commander could reasonably rely; 2) whether the sexual assault portion of the survey contained information on which a commander could reasonably rely; and 3) whether each section of the survey was valid.

AFPC critiqued some aspects of the survey and noted apparent problems with survey administration, the wording of some of the questions, and the fact that questions had changed over time.<sup>638</sup> However, AFPC did not find the surveys invalid;<sup>639</sup> after reviewing and assessing the information on the climate surveys, AFPC concluded that "[t]here is substantial social climate information in the survey raw data that, if properly presented, could benefit a commander."<sup>640</sup> The AFPC review noted that the sexual assault portion of the survey contained data "that could reasonably have been of use to a commander if it were appropriately analyzed and presented."<sup>641</sup>

The surveys appeared to be of questionable value to some at the Academy. Representatives from the Research Division, the Center, and the Department of Behavioral Sciences and Leadership expressed concerns over the environment in which the survey was administered and the nature of some of the responses.<sup>642</sup> One scientist from the Center estimated that between 10-20% of all respondents completed the surveys with "patterned" answers that suggested they had not actually read the questions.<sup>643</sup> Another representative from the Center noted that a few of the male respondents indicated the factual impossibility that they had been vaginally penetrated in response to a question on the sexual assault portion of the survey.<sup>644</sup>

The results of the sexual assault portion of the surveys do not appear to have been viewed as credible by the Department of Behavioral Sciences and Leadership. As the current head of the Department explained:

<sup>637</sup> *Id.* at 3. In 2001, cadet squadrons with the highest response rate were given pizza parties and other similar rewards. In 2002, cadets were not allowed to leave for Spring Break until they had completed the surveys. One representative of the Center indicated that in his estimation between 10-20% of responses had to be discounted. *Id.*

<sup>638</sup> E-mail, AFPC Analysis of USAFA Social Climate Survey Data, Exhibit 208, at 3. AFPC also observed that there was no link between the social climate part of the survey and the sexual assault questions, and recommended that the survey be administered in such a way that the data can be linked "to provide a complete and total picture of the 'social climate.'"

<sup>639</sup> *Id.* at 6. AFPC specifically addressed the low response rates on the 1998 and 2000 Surveys. According to AFPC, the response rates provided an acceptable confidence level of the representation of the cadet population. Experts at the Academy reviewed AFPC's analysis, and disagreed with some of the conclusions, citing the lack of randomness in the sample.

<sup>640</sup> *Id.* at 5.

<sup>641</sup> *Id.* at 2.

<sup>642</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 3.

<sup>643</sup> *Id.* at 3. For example, some respondents simply alternated between "a" and "b" for their answers. *Id.*

<sup>644</sup> *Id.* at 3.

I received a copy of the most recent data from the Climate Survey [as soon as I arrived at the Academy]...and, I gave them to [the Director of the Cadet Counseling Center] and I [asked him what we did with this]. And, he said, "[W]e'll use this...to look at our program, get a sense for whether or not people coming into the Academy are coming in with more sexual assault...experience than...after they arrive and things like that." He later came back to me with a proposal to say, "you know, these data, we don't do anything...with them....we don't trust the data."<sup>645</sup>

According to the Department Head, the Director of the Cadet Counseling Center continued with his recommendation:

He said, "my recommendation is that...we do away with these questions. You know they're subject to FOIA and, quite frankly, they're dangerous if they get in the hands of somebody who doesn't understand the process of how these surveys were conducted and how the survey's constructed....[Y]ou can kind of cherry-pick what you want to create a story, and that story would be inaccurate."<sup>646</sup>

The general perception that the Social Climate Surveys were unreliable was echoed by the Superintendent, Lt Gen Dallager. During his interview, Lt Gen Dallager stated that "...the social climate surveys, particularly with regard to the issue [of sexual assault], the feedback that I get is that they're not considered very valid."<sup>647</sup>

When asked about this in a group discussion, Academy representatives expressed concerns over the methodology and results of the sexual assault portion of the climate surveys.<sup>648</sup> Nonetheless, the Dean of Faculty, Brigadier General David A. Wagie, suggested that the results were indicators:

I am familiar with the surveys and I am familiar with why a statistician might consider [them] invalid. But I guess I believe [they are] still indicators of lack of knowledge by cadets or skepticism by cadets of our ability to support them.<sup>649</sup>

Another concern with the Social Climate Survey is that the wording of questions has repeatedly changed over time. Brigadier General Wagie, the Dean of Faculty and former Director of the Center, explained the concern: "And one of the difficulties with the survey is, if you change the questions year to year and try to get more specific, then you don't have the longitudinal comparison you'd like to make."<sup>650</sup> In other words, without consistent questions across years, trend analysis may be difficult or even impossible.

While mindful of the above comments and concerns, we examined the results of the sexual assault portion of the Social Climate Survey.

<sup>645</sup> Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 19 (This verbatim quote was included in what was otherwise a summarized statement.)

<sup>646</sup> *Id.* at 19.

<sup>647</sup> Statement of Lt Gen Dallager, Exhibit 71, at 24.

<sup>648</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2-3.

<sup>649</sup> Statement of Brig Gen Wagie, Exhibit 198, at 57.

<sup>650</sup> Statement of Brig Gen Wagie, Exhibit 209, at 5.

### 3. Sexual Assault Portion of the Social Climate Survey<sup>651</sup>

Questions pertaining to sexual assault have been included as part of the survey since 1996.<sup>652</sup> We located documents containing summarized results of the sexual assault questions from the 1996, 1997, 1998, 2000, 2001, and 2002 Climate Surveys.<sup>653</sup> These results are summarized in Table 1 (the number of alleged sexual assaults represented in the 2002 Survey results includes alleged assaults that occurred at the Academy Preparatory School and therefore cannot be directly compared against the results from past years).<sup>654</sup>

See Table on Next Page

<sup>651</sup> The Sexual Harassment and Alcohol Portions of the Surveys are discussed elsewhere in this Report. See this Report, Section IV.A., Gender Climate and Sexual Harassment, and Section IV.D., Alcohol.

<sup>652</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105<sup>th</sup> Annual Convention of the American Psychological Association (August 16, 1997). Exhibit 49, at 11.

<sup>653</sup> See Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1996-1997 at Attachment 4 and AY 1997-1998 at Attachment 3). There is anecdotal evidence that the 1995 survey may have also contained such questions. Statement of Former Chief of Sexual Assault Services, Exhibit 68, at 2. No survey was administered in 1999 or (thus far) in 2003. The January 2003 Sexual Assault Survey was not part of the Social Climate Survey and did not include questions about the occurrence of sexual assault. Sexual Assault Reporting and Treatment Program Survey, Exhibit 210.

<sup>654</sup> The information provided in this table was prepared with the assistance of statisticians at the Air Force Personnel Center who analyzed the underlying data provided by the Academy. See Exhibit 208, at Tabs A and B. As questions evolved from year-to-year, some surveys contained questions not asked on others. After 1997, surveys permitted a respondent to answer "yes," "no," or "unsure" in response to the question of whether they had been sexually assaulted. Thus, in addition to the "yes" responses indicated in the Table, all questions asked after 1997 received a number of "unsure" responses. The definition of "sexual assault" used in the surveys after 1997 was "any unwanted touching of a sexual nature (fondling, penetration, oral sex, etc.) that is done without a person's consent. Consent is NOT given when there is force, threat of force, coercion, or when the person is alcohol, drug, or mentally impaired, underage, asleep or unconscious."

**Table 1 - Sexual Assault Portion of Social Climate Surveys**

Social Climate Survey	1996	1997	1998	2000	2001	2002
Number of Surveys Administered Containing Sexual Assault Questions <sup>655</sup>	1,029	1,318	3,949	3,965	[4,000]	[4,000]
Number of Responses	754	750	576	314	2,060	1,949
Response Rate	79%	57%	15%	8%	51%	48%
Number of Responses (F)	123	125	108	71	365	369
Number of Responses (M)	631	625	468	243	1,695	1,580
"Have you ever been sexually assaulted since you arrived at USAFA?" (F) <sup>656</sup>	N/A <sup>657</sup>	19 (15%)	12 (11%)	[9] <sup>658</sup> (13%)	69 (19%)	56 (15%)
"Have you ever been sexually assaulted since you arrived at USAFA?" (M) <sup>659</sup>	N/A	12 (2%)	10 (2%)	[8] <sup>660</sup> (2%)	98 <sup>661</sup> (6%)	24 (2%)
"In the past year..., have you been sexually assaulted?" (F)	11 (9%)	13 (10%)	N/A	N/A	N/A	N/A
"In the past year..., have you been sexually assaulted?" (M)	7 (1%)	10 (2%)	N/A	N/A	N/A	N/A

The questions represented in Table 1 reflect the "top-level" questions pertaining to sexual assault. While the wording of the question ("Have you ever been sexually assaulted since you

<sup>655</sup> Bracketed numbers are estimates.

<sup>656</sup> The threshold sexual assault question asked on the 1997 and 2002 Surveys varied slightly. The 1997 Survey asked "Have you ever been sexually assaulted since you started attending USAFA?" The 2002 Survey asked "Have you ever been sexually assaulted while a cadet (or USAFA Preparatory School student) while at USAFA?"

<sup>657</sup> N/A indicates the information was not applicable because the question was not asked in the survey.

<sup>658</sup> Bracketed number is an estimate. The 2000 Survey computer program failed to capture the gender breakdown on the sexual assault portion of the survey. See e-mail, analysis of USAFA social climate survey data, Exhibit 208 at 3. For purposes of this table, 52% (the average percentage of females indicating they had been the victims of sexual assault in other years) of these respondents were assumed to be female. This translates to 9 (52% of 17) female victims in 2000.

<sup>659</sup> The threshold sexual assault question asked on the 1997 and 2002 Surveys varied slightly. The 1997 Survey asked "Have you ever been sexually assaulted since you started attending USAFA?" The 2002 Survey asked "Have you ever been sexually assaulted while a cadet (or USAFA Preparatory School student) while at USAFA?"

<sup>660</sup> Bracketed number is an estimate. The estimated number of males was derived by subtracting the estimated number of female responses from the total number of affirmative responses.

<sup>661</sup> This number (and the percentage of male cadets it represents) is grossly disproportionate with numbers from other years. As discussed earlier, some of the responses in this year included males indicating they had been vaginally penetrated, which suggests that some responses are not accurate. Moreover, the fact that the *percentage* of male cadets indicating they had been victims of sexual assault returned in 2002 to the same level as past years, suggests that the 2001 number is not an accurate representation. However, consideration should be given to the possibility that some portion of these responses reflected an actual increase in the number of male victims.

arrived at USAFA" or some variant of those words) excludes assaults that occurred prior to a cadet's arrival at the Academy, the question encompasses acts falling outside of the Academy's control (e.g., those occurring during Spring Break or otherwise unrelated to the Academy).<sup>662</sup> Affirmative answers to these questions led to a number of other more specific questions. The answers to these more specific follow-on questions suggest that some assaults reported in the surveys took place away from the Academy or were committed by non-cadets.<sup>663</sup> Moreover, the definition of "sexual assault" used in these surveys was a variant of the Academy's definition, and thus may encompass some acts that would not normally be considered criminal. Nonetheless, Table 1 provides at least one indicator from the sexual assault portion of the climate survey, that between 11-19% of female cadets responding to the survey over the last five years expressed that they had been sexually assaulted while at the Academy.<sup>664</sup>

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<sup>662</sup> As noted above, the 2002 survey also explicitly included sexual assaults against an individual while a USAFA Preparatory School student.

<sup>663</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, Attachment 4; AY 2001-2002, Attachment 4).

<sup>664</sup> We prepared the table, as there was no evidence of any existing trend analysis.

#### **IV. Factors Related to the Deterrence and Occurrence of Sexual Assault**

This portion of the Report addresses factors that appear to be related to sexual assault at the Academy, beyond those already discussed in the context of specific programs.

##### ***A. Gender Climate and Sexual Harassment***

Social climate surveys and interviews indicate that the gender climate at the Academy is one in which instances of negative comments and sexual harassment<sup>665</sup> based on gender of some female cadets have existed despite programs to eliminate them and this climate may, in certain circumstances, contribute to the incidence of sexual assault.

Since the 1991-1992 academic year, the Academy has administered Social Climate Surveys.<sup>666</sup> In recent years, the surveys have included questions pertaining to gender climate and sexual harassment.<sup>667</sup> The Social Climate Surveys were not administered every year and there are questions regarding their reliability.<sup>668</sup> Still, the information provides an indication of the Academy climate as it relates to female cadets. Results from the 1998 survey indicate that, of responding female cadets, 41% reported being sexually harassed by other cadets (and 0.3% by faculty or staff<sup>669</sup>), 63% reported derogatory comments from other cadets on the basis of gender (and 3% from faculty or staff), and 57% felt discriminated against by other cadets on the basis of gender (and 13%

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<sup>665</sup> The Air Force defines sexual harassment, per Air Force Instruction 36-2706, Attachment 1, as follows:

A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Submission of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career or

Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

The Air Force definition is substantially the same as the DoD definition of sexual harassment found at DoD Directive 1350.2.

<sup>666</sup> Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105<sup>th</sup> Annual Convention of the American Psychological Association (August 16, 1997) Exhibit 49, at 11. Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

<sup>667</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

<sup>668</sup> See this Report, Section III.I., Social Climate Surveys.

<sup>669</sup> "Staff" includes AOCs, MTLs, and coaches.

by faculty or staff).<sup>670</sup> The raw data from the 2000 survey was never compiled into a useful format or briefed to senior leadership because the Center for Character Development considered the response rate to that survey to be too low to be meaningful.<sup>671</sup> However, the 2000 survey results showed that of responding female cadets, 42% reported being sexually harassed by other cadets (and 0.3% by faculty or staff), 81% reported derogatory comments from other cadets on the basis of gender (and 7% from faculty or staff), and 66% felt discriminated against by other cadets based on gender (and 13% by faculty and staff).<sup>672</sup> The 2001 survey results showed that of responding female cadets, 47% reported being sexually harassed by other cadets (and 2% by faculty and between 0-2% by staff), 68% reported derogatory comments from other cadets on the basis of gender (and 13% by faculty, and 3-6% by staff), and 66% felt discriminated against by other cadets based on gender (and 20% by faculty and between 8-18% by staff).<sup>673</sup> The 2002 survey indicated that of female cadets who responded, 36% reported being sexually harassed by other cadets (and 3% by faculty and between 0-2% by staff), 63% reported derogatory comments from other cadets on the basis of gender (and 10% by faculty and between 2-5% by staff), and 57% felt discriminated against by other cadets on the basis of gender (and 15% by faculty and between 7-17% by staff).<sup>674</sup> Comments derived from the 2003 Sexual Assault Reporting and Treatment Program Survey also indicate sexual harassment of female cadets is a concern of some cadets.<sup>675</sup>

Recent survey results also suggest a fear of reprisal among female cadets for reporting sexual harassment. Results from the 1998 survey indicate that, of responding female cadets, 75% indicated a fear of reprisal from other cadets for reporting sexual harassment, 39% feared reprisal from AOCs, 34% feared reprisal from MTLs, 29% feared reprisal from coaches, and 25% feared reprisal from faculty.<sup>676</sup> Results from the 2000 survey indicate that, of responding female cadets, 76% indicated a fear of reprisal from other cadets for reporting sexual harassment, 44% feared reprisal from AOCs, 37% feared reprisal from MTLs, 26% feared reprisal from coaches, and 40% feared reprisal from faculty.<sup>677</sup> The 2001 survey results indicated that 75% of female cadets

<sup>670</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, attachment 2, at 12-13). The briefing provided a number of conclusions including that the survey showed a "strong concerns about harassment." The briefing offered two recommendations for improving gender issues: 1) encouraging faculty and staff to share with cadets their perspectives regarding gender issues; and 2) enriching human relations lessons to highlight the negative and false perceptions about female cadets. The briefing indicated that the Dean of Faculty and Training Wing were the offices of primary responsibility for implementing the first recommendation, and the Center for Character Development was responsible for implementing the second recommendation. *Id.* at 26.

<sup>671</sup> E-mail from Deputy Director, Center for Character Development to Working Group, April 22, 2003, Exhibit 206. The 2000 survey results were not summarized contemporaneously by anyone at the Academy in 2000. At the request of the Working Group, the Academy's Institutional Research Division examined the individual responses and summarized the results during our investigation.

<sup>672</sup> Hypothetical Briefing, Prepared by USAFA/XPR (May 2003), Exhibit 211.

<sup>673</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, attachment 2, at 14-17).

<sup>674</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, attachment 2, at 13-16). The 2002 briefing did not contain conclusions and recommendations as in past briefings, but we note that although responses remained at significant levels in each category, they reflected some improvement. However, according to the individual who prepared the briefing, the briefing was never presented to anyone because the Center for Character Development decided the results were not useful or reliable. Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 212, at 30-31, 36-37.

<sup>675</sup> Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 2 (cadet tired of being looked down on or hearing sexual comments about her because she is a female.); at 26 (cadet reports sexual harassment is prevalent); at 36 (cadets say nothing when "sexist or sexual jokes" are made); at 45 (obscenities shouted at the female guest of a male cadet).

<sup>676</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, Attachment 2, at 16).

<sup>677</sup> Hypothetical Briefing, Prepared by the Academy's Institutional Research Division (May 2003), Exhibit 211. The 2000 survey results were not summarized contemporaneously by anyone at the Academy in 2000. At the request of the

responding feared reprisal from other cadets for reporting sexual harassment, 50% feared reprisal from AOCs, 42% from MTLs, 42% from coaches, and 45% from faculty.<sup>678</sup> The 2002 results showed slightly lower percentages of female cadets who feared reprisal for reporting sexual harassment: 63% feared reprisal from other cadets, 48% from AOCs, 36% from MTLs, 36% from coaches, and 41% from faculty.<sup>679</sup>

Sexual harassment at the Academy was also seen in the interviews with cadets, professors, and Academy leadership.<sup>680</sup> These interviews indicate that frequent offensive, gender-based comments are directed at female cadets.<sup>681</sup> The current Dean of Faculty perceives that in some cadet squadrons there tends to be accepted crude behavior, and an expectation that cadet women will put up with it to be accepted.<sup>682</sup> One female cadet described these comments as making her feel uncomfortable,<sup>683</sup> and another said they made her feel unwelcome.<sup>684</sup> A former cadet expressed concern about being treated differently by instructors.<sup>685</sup> The current head of the Department of Behavioral Sciences and Leadership at the Academy believes there is a relationship between sexual harassment and sexual assault.<sup>686</sup> (Others with whom the Working Group consulted questioned such a correlation.) At least one recent study concludes that there is a higher incidence of rape of female military members of all services where a ranking officer or immediate supervisor allowed sexually demeaning comments and gestures toward women in the workplace.<sup>687</sup>

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Working Group, the Academy's Institutional Research Division examined the individual responses and summarized the results during our investigation

<sup>678</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, Attachment 2, at 23).

<sup>679</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 2, at 22).

<sup>680</sup> Incidents of sexual harassment at the Academy may be reported on a Form 27, which is used to document a range of inter-personal complaints. Information from the Form 27s is summarized and used to create a Human Relations Climate Report. This report is forwarded to the Commandant, Training Group Commander, and the Vice-Commandant. Statement, Former Director, Center for Character Development, Exhibit 72, at 18. The staff team reviewed the available monthly reports between January 2001 and March 2003 and found they cover, for the most part, relatively minor and isolated events.

<sup>681</sup> Memorandum for Record, Interview with Cadet Counseling Center Personnel, Exhibit 154 (reporting that sexual harassment happens daily in the Cadet Wing; comments such as "nice ass"; "your ass is getting fat"); Memorandum for Record, Interview with First-Class cadet, Exhibit 134; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25; Memorandum for Record, Interview with Faculty Member, Exhibit 28 (stating he is aware of significant anecdotal evidence suggesting a hostile sexual climate toward women); Memorandum for Record, Group Interview with Female Cadets, Exhibit 56; Memorandum for Record, Interview with Third-Class cadet, Exhibit 57 (female cadet told by upperclassman "girls don't belong here"); Memorandum for Record, Interview with Second-Class cadet, Exhibit 138 (female told by upperclass female cadet she should get used to people talking about her body); Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24 (comments such as "hey, redhead, nice ass" commonplace); statement, First-Class cadet, Exhibit 41 (males referring to each other as "pussy"); Statement, TSgt, Female Military Training Leader, Exhibit 31 (cadets sending inappropriate e-mail with sexual references).

<sup>682</sup> Statement of Brig Gen Wagie, Exhibit 198, at 71.

<sup>683</sup> Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 21 (describing unwanted touching meant in a "playful" manner but still very uncomfortable).

<sup>684</sup> Statement of Anonymous Former Cadet, Exhibit 391 (a female graduate, interviewed in approximately 1993-94, stated that she was told by upperclass male cadets that women don't belong at the Academy and hindered the mission of the Air Force. One upperclass male called her a "stupid bitch." She was subjected to comments about her physical appearance including being told that she was ugly and overweight, despite her status as an accomplished athlete).

<sup>685</sup> Statement of Anonymous Former Cadet, Exhibit 391, at 5-6 (male faculty member commenting they were changing their teaching style because there were women in the class and flirting with cadets).

<sup>686</sup> Statement, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 9 (believes sexual harassment is "a foot in the door toward assault").

<sup>687</sup> Anne G. Sadler, *Factors Associated with Women's Risk of Rape in the Military Environment*, American Journal of Industrial Medicine, Vol. 43, Issue 3, 2003, pp. 262 - 273 (purpose of study to identify workplace factors associated with rape occurring during military service) Exhibit 213.

Academy leadership interviews showed a range of perspectives regarding the gender climate. Lieutenant General Hosmer, Superintendent of the Academy between 1991 and 1994, was aware of harassment issues from female cadets he interviewed following a sexual assault in 1993 and knew that women found sexual references troublesome. He was also aware of a 1993 GAO review regarding gender issues.<sup>688</sup> In 1993, Lt Gen Oelstrom, then Superintendent of the Academy, believed women were making remarkable progress toward integration into the Academy and perceived few pervasive gender climate issues.<sup>689</sup> At the same time, he was aware that a certain percentage of female cadets were concerned with issues of sexual harassment and sexual assault.<sup>690</sup> Brigadier General Welsh, Commandant from June 1999 to August 2001, felt that there was an undertone of harassment which exhibited itself in the form of what the male cadets believed were humorous comments.<sup>691</sup> However, Lt Gen Dallager, Superintendent of the Academy, Summer 2000 through April 2003, found that the atmosphere of sexual harassment was more pervasive than any other Air Force organization in which he had served.<sup>692</sup> Brigadier General Gilbert, Commandant, August 2001 to April 2003, became aware of certain sexual harassment issues after receiving information from the Center for Character Development on the percentage of cadets who believed derogatory comments and jokes were aimed at them based on gender. This resulted in his making changes to the Human Relations Education Officer (HREO) program, to address gender climate concerns, and to deal with instances of sexual harassment.<sup>693</sup> While the Social Climate Surveys pointed to the existence of sexual harassment, the surveys were not always briefed to senior leadership. Several Superintendents and other Academy leaders gauged the issue through individual contact with women cadets.<sup>694</sup>

The available information indicates that sexual harassment remains problematic; but, its true extent and nature cannot be ascertained in the absence of survey instruments that provide reliable information over time.

## **B. Cadet Authority**

The military training environment, combined with the subordinate position of Fourth-Class cadets, can make those cadets more vulnerable to sexual assault.

### **1. Basic Cadet Training**

An Academy cadet begins training by attending Basic Cadet Training (BCT), which is split into two phases: BCT 1 and BCT 2. BCT may be the basic cadet's first experience with military

<sup>688</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 6-8.

<sup>689</sup> Lt Gen Oelstrom did not recall any communications highlighting that sexual harassment was or should be an area of concern. Statement of Lt Gen Oelstrom, Exhibit 63, at 20.

<sup>690</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 12-13.

<sup>691</sup> "[T]here was an atmosphere of not much hesitance to make a smart-alec [sic] remark about a female in the cadet wing." Statement of Brig Gen Welsh, Exhibit 64, at 18. On the twentieth anniversary of the first graduating class with women, Brig Gen Welsh requested a status report of women at the Academy. A panel of cadets and graduates, convened as part of the information gathering effort, indicated gender-based name-calling was a concern. As a result, Brig Gen Welsh directed the Center for Character Development to address this issue in their lessons. *Id.* at 21.

<sup>692</sup> Statement of Lt Gen Dallager, Exhibit 71, at 46.

<sup>693</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 42-43.

<sup>694</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 11. Statement of Brig Gen Welsh, Exhibit 64, at 16, (A comment in which a female cadet was referred to as a "cadet girl" led Brig Gen Welsh to investigate training received by cadets.); Statement of Lt Gen Dallager, Exhibit 71, at 47.

life. BCT 1 is largely academic and is held in Vandenberg Hall on the Academy proper, where the basic cadets “in-process” and receive informational briefings including military topics such as customs, courtesies and marching.<sup>695</sup> Basic cadets also begin physical conditioning training in preparation for the rigors of BCT 2. BCT 2 takes place at Jack’s Valley, a wooded area on the Academy grounds located five miles from the main Academy buildings. During BCT 2, the emphasis is on physical training, small unit tactics and field training.<sup>696</sup>

During the five weeks of BCT,<sup>697</sup> cadet candidates are overwhelmed with information, material, and demands on their time.<sup>698</sup> In theory, every moment of a cadet’s time is accounted for.<sup>699</sup> Cadets are assigned to co-ed squadrons that remain constant throughout BCT 1 and 2, though the locations and the leadership for those squadrons change between the two phases.<sup>700</sup> The policy of having BCT female cadet rooms interspersed among BCT male cadet rooms has now been superseded, however, by the *Agenda for Change*, which directs separate billeting arrangements for female and male cadets upon entering BCT. During the academic year, all Fourth-Class cadets, male and female, are to be billeted with their assigned squadrons, with female cadet rooms clustered together near the women’s bathrooms.<sup>701</sup>

During both BCT 1 and BCT 2, the basic cadets are trained by upperclass cadets, known as the cadre. The cadre is supervised by one Air Officer Commanding (AOC) and one Military Training Leader (MTL),<sup>702</sup> plus one associate AOC and one associate MTL, per squadron of approximately 120 basic cadets.<sup>703</sup>

Cadets are taught the cadet leadership chain and the importance of obedience to superiors. They are also briefed on the Basic Cadets’ Bill of Rights, a document that informs all basic cadets of their right to be free of: touching, swearing, inappropriate sexual advances, requests for sexual favors and other verbal or physical abuse of a sexual nature. This Bill of Rights is briefed to cadets early in the BCT program and is also given to each basic cadet in a manual called “*Wing Tips, Basic Cadet Training*.”<sup>704</sup> Cadets and permanent party leadership acknowledged that basic cadets might not assimilate this information among the flood of other material received.<sup>705</sup> The *Agenda for Change* seeks to increase awareness of basic cadets’ rights by requiring increased emphasis on fair treatment and mutual respect, and by specifically requiring cadets be provided substantial material on sexual assault prevention and the overall behavior expected of cadets.<sup>706</sup>

<sup>695</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, at 24-25, (2002-2003 ed.) Exhibit 6.

<sup>696</sup> *Id.* at 167.

<sup>697</sup> *Id.*

<sup>698</sup> Statement of TSgt, Military Training Leader, Exhibit 31, at 3.

<sup>699</sup> Statement of Col Slavec, Exhibit 23, at 171. *But see also* same statement relating that on one occasion “the football team [came] up and [took] the freshman football players outside of training at night and nobody knew any better....” *Id.* at 23-24.

<sup>700</sup> Statement of Deputy Group AOC, Exhibit 105.

<sup>701</sup> *Agenda for Change*, Exhibit 4.

<sup>702</sup> For a description of these permanent party members, see this Report, Section IV.G., Experience and Qualifications of AOCs and MTLs.

<sup>703</sup> Statement of Deputy Group AOC, Exhibit 105, at 1.

<sup>704</sup> *Id.* at 3.

<sup>705</sup> Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37; Statement of Female Second-Class cadet, Exhibit 109; Statement of Female Military Training Leader, Exhibit 31.

<sup>706</sup> *Agenda for Change*, Exhibit 4.

BCT cadre instructors are upcoming first and Second-Class cadets (juniors and seniors). They receive a week of training ("prep week") in preparation for their leadership of the Basic Cadet Training squadron, where they receive briefings on how to run the training, resources available to them, safety issues, and motivational techniques. The Cadet Counseling Center provides an extensive briefing on "Support of BCT" which provides typical reactions experienced in BCT (shock and distress, confusion, lowered self-esteem), typical problems (including homesickness, stress, and self-doubt) and special concerns. One such concern highlighted is sexual assault prior to entering the Academy. Cadre members are trained on what symptoms to watch for, and given information about the Cadet Counseling Center. Additional members of cadre, typically upcoming Second-Class cadets, are also given specialized training as "Flight Specialists." These cadets are essentially the first line of contact with basic cadets who encounter problems and are trained to recognize potential problems, provide on the spot counseling when appropriate, and to refer cadets to the Cadet Counseling Center.<sup>707</sup>

All members of the cadet cadre and permanent party trainers at BCT receive a briefing on sexual harassment, with the specific objective of conducting appropriate training in BCT. The briefing includes a definition of sexual harassment, as well as four case studies for discussion. Cadre training also includes a discussion of the Rules of Engagement for training, which consists of a one page handout that essentially summarizes the Basic Cadets' Rights, a reiteration of the definition of sexual harassment, discussion of prohibited training times, the limits of physical training and the consequences of refusal to be trained.<sup>708</sup> All of these are essentially extracts of guidance found in Training Wing guidance on these topics.

The training provided by the cadre is designed to test the basic cadets under various stressors, including intimidation, fatigue, deliberate over tasking and a strange environment. Cadets are trained to obey the orders of their superiors. In a deliberate attempt to stress the cadets, orders are barked out at the cadets, "in their face," i.e., at loud volume and at very close range.<sup>709</sup> The cadre keeps the training at a rigorous pace.

Cadets are asked to run, do pushups, and march, sometimes to the edge of their physical limits.<sup>710</sup> During this training, the cadre may be shouting at the cadet to encourage the cadet to use all his or her available energy.<sup>711</sup> These are stress-inducing techniques, and these practices are designed to teach cadets to cope with such stressors.<sup>712</sup> They also serve to test the mettle of the cadets, and to weed out those cadets whose commitment to service may not be at the level desired by the Air Force; the drop-out rate for basic cadets over the past five years has ranged from 4.7% to 7.3% per session.<sup>713</sup> The manner of conducting these activities has been questioned over time, with particular efforts under Lt Gen Oelstrom (Superintendent at the Academy from 1997 to 2000) to make them more moderate.<sup>714</sup>

<sup>707</sup> 2002 Basic Cadet Training Materials, Exhibit 214, at 2.

<sup>708</sup> *Id.*

<sup>709</sup> Statement of Deputy Group AOC, Exhibit 105, at 4.

<sup>710</sup> *Id.*

<sup>711</sup> For pictures of upperclassmen performing so-called "high-volume correction," see the Newspaper Article, Re: Recognition, Exhibit 215.

<sup>712</sup> Statement of Chief of Character and Leadership Education, Center for Character Development, Exhibit 204, at 5. (fourth-class system creates so much pressure it teaches cadets to cope).

<sup>713</sup> E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, regarding BCT losses for Classes 2002-2006.

<sup>714</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 43.

From the moment they arrive as trainees, basic cadets are taught that loyalty to fellow cadets is paramount. Cadets survive as a group, and consequently they fear pulling the group down by failing to do the required training. In return, one cadet has stated, particularly in BCT, "your friends are everything" and provide a source of support for each other.<sup>715</sup>

In the case of the cadre-run BCT, there is the potential for the cadre to abuse the power they hold as primary trainers. There is anecdotal evidence that some cadre members engage in inappropriate methods of training the basic cadets. The Deputy Commandant of BCT stated that examples of some training violations last BCT session included: a cadet instructor hefting a baseball bat with the words "BASIC KILLER" written on it in front of the cadets, and a male cadre instructor making a female basic cadet get down on her knees in front of him and perform "bracing" maneuvers (where the chin is tucked in towards the neck). Both of these violations were reported and corrective action was taken.<sup>716</sup> The Deputy Commandant of BCT acknowledged that the limited number of AOCs and MTLs cannot supervise all the cadre training as the squadrons may be spread out over Jack's Valley, and they can only punish those offenses reported to them.<sup>717</sup>

The remote location of Jack's Valley and the limited security available<sup>718</sup> could increase the potential for sexual assault to take place. One female basic cadet reported being asked by an upperclass cadre member to meet him at night away from the tent area. She stated that she believed she had to comply, and has alleged she was subsequently raped by the cadre member. This case is still on-going.<sup>719</sup> Another basic cadet reported being taken out of her tent at night by three male upperclass cadre members who took her into the woods, where she was allegedly raped by two of them. She was not able to identify her assailants.<sup>720</sup> A female chaplain who provided chaplain services to basic cadets during BCT stated that three female victims approached her over the course of BCT to report they were victims of sexual assault, and that she was not aware of any of them reporting it to anyone else.<sup>721</sup>

The *Agenda for Change* addresses concerns regarding the potential abuse of vulnerable basic cadets during BCT by upperclass cadre trainers. Beginning in the summer of 2003, the BCT program will be augmented to emphasize fair treatment and mutual respect, providing substantial material on sexual assault prevention and overall behavior expected of cadets, as well as guidelines on workplace behavior, demeanor and consequences.<sup>722</sup> This initiative ensures that only First-Class cadets or Second-Class cadets will interact with Fourth-Class cadets during BCT. During the first half of the fall semester, only First-Class cadets will discipline Fourth-Class cadets, while after Thanksgiving, selected Second-Class cadets will train the Fourth-Class cadets. The opportunity for Third-Class cadets to train Fourth-Class cadets will be limited to academic mentoring, tutoring or

<sup>715</sup> Statement of Male Fourth-Class cadet, Exhibit 216, at 1.

<sup>716</sup> Statement of Male Deputy Group AOC, Exhibit 105, at 3.

<sup>717</sup> *Id.*

<sup>718</sup> The basic cadets sleep in a tent city they erect themselves. UNITED STATES AIR FORCE ACADEMY CATALOG, at 167 (2002-2003 ed.) Exhibit 6.

<sup>719</sup> Air Force Form 1168, Witness Statement of Female Cadet, Sept. 19, 2002, Exhibit 217.

<sup>720</sup> AFOSI Case Summary, Exhibit 58, at 67.

<sup>721</sup> Statement of Chaplain, 10th Air Base Wing, Exhibit 30, at 3. Chaplains have confidentiality and are not obligated to report the assault to command; for this reason, this chaplain believes, cadets feel more secure in reporting to her.

<sup>722</sup> *Agenda for Change*, Exhibit 4.

on-the-spot corrections, and any discipline administered by a Third-Class cadet towards a Fourth-Class cadet will have the oversight of a First-Class cadet.<sup>723</sup>

## 2. Fourth-Class cadets in the Cadet Wing Structure and the Fourth-Class System

Cadets entering the Academy are organized in two hierarchical systems: the Cadet Wing and the so-called four-class system.

The Cadet Wing is designed to mirror the positions found within an active duty Air Force wing.<sup>724</sup> First-Class cadets (seniors) are given cadet officer positions, while Second-Class cadets (juniors) have cadet NCO positions and Third-Class cadets (sophomores) fill billets that would be assigned to airmen.<sup>725</sup> The Fourth-Class cadets are subordinate to all the ranks and must obey the orders of any upperclass cadet.<sup>726</sup> The theory behind this "leadership laboratory" is that the cadets will lead, govern and discipline themselves by aligning themselves within the organizational structure of the Cadet Wing. They are assisted in doing so by a permanent party AOCs and MTLs assigned to each squadron, and by active-duty mentors who are encouraged to "follow" the cadets as they run the wing.<sup>727</sup>

In addition to forming part of the Cadet Wing, cadets also have a place in the fourth-class system by virtue of their class year. Under the fourth-class system, Fourth-Class cadets are in a special status from the summer they enter Basic Cadet Training until early spring the following year when they are "recognized." During that time, Fourth-Class cadets are called "doolies"<sup>728</sup> and are counseled, corrected and disciplined by the upperclass cadets of the other three class years.<sup>729</sup> Fourth-Class cadets are restricted as to where they may go in the Academy, how they must walk (at double-time along the marble strips of the terrazzo), and what luxury items they may possess. Fourth-Class cadets are the most severely restricted and have the fewest privileges.<sup>730</sup> Of all the year groups, the most pressure is placed on Fourth-Class cadets.

Interviews with faculty, AOCs and cadets indicated that female Fourth-Class cadets are vulnerable to the attentions of upperclass male cadets, who may use their status and position in the fourth-class system to pressure Fourth-Class cadets into dating or meeting with them.<sup>731</sup> Cadets report that female Fourth-Class cadets will receive e-mail messages, or Instant Messages, from upperclass male cadets who have spotted them at the Academy, asking them if they want to meet.<sup>732</sup> Even though this is considered fraternization, prohibited under Cadet Wing Instruction 51-201, a

<sup>723</sup> *Id.*

<sup>724</sup> "Wing" is the name of the organizational structure at most Air Force Installations.

<sup>725</sup> Statement of Squadron AOC, Exhibit 34; and see, generally, AF Cadet Wing Instruction 38-101, Chapter 2.

<sup>726</sup> AF Cadet Wing Instruction 38-101, § 2.5. This has been changed by the *Agenda for Change*, Exhibit 4.

<sup>727</sup> AF Cadet Wing Instruction 38-101, § 1.14.

<sup>728</sup> From the Greek *duolos*, meaning "subject," UNITED STATES AIR FORCE ACADEMY CATALOG, at 168, (2002-2003 ed.) Exhibit 6.

<sup>729</sup> This practice will no longer in effect due to implementation of the *Agenda for Change*. As noted above, only First- and Second-Class cadets will be able to discipline and train Fourth-Class cadets.

<sup>730</sup> AF Cadet Wing Instruction 36-3001, ¶ 4.6.

<sup>731</sup> Statement of Female Fourth-Class cadet, Exhibit 200, at 2; Statement of Captain, Faculty Member, Exhibit 26, at 3; Statement of Male MTL, Exhibit 133, at 3.

<sup>732</sup> Statement of Female Third-Class cadet, Exhibit 57, at 2.

female Fourth-Class cadet may feel she has no choice but to agree to meet with the upperclass cadet.<sup>733</sup>

Interviews also revealed instances of male upperclass cadets walking into female Fourth-Class cadets' rooms unannounced and uninvited. One female Fourth-Class cadet stated that an upperclass cadet kept on walking into her room when she returned from the shower, and she had to stand in her underwear and talk to him.<sup>734</sup> Another female cadet reported that when she was a Fourth-Class cadet, she was woken up at two-thirty in the morning by a male First-Class cadet who was drunk, and decided he wanted to see her. She stated she was scared by this incident.<sup>735</sup> A male First-Class cadet squadron commander acknowledges instances on multiple occasions of upperclass males entering the rooms of lower class female cadets uninvited at night.<sup>736</sup> Lieutenant General Hosmer, Superintendent of the Academy from 1991 to 1994, also described anecdotal incidents of which he was aware, typically, of cases in which a female cadet would wake up in her room and find a male cadet standing there, or a male cadet with his hand on her leg, or her breast, in the middle of the night.<sup>737</sup>

The power exercised by upperclass male cadets over more junior female cadets to coerce a sexual relationship is a factor in several reported cases. In one case a male upperclass cadet offered to store prohibited items such as CDs for a female Fourth-Class cadet (items she was not allowed to possess as a Fourth-Class cadet) in his room. She claimed that he later initiated an abusive sexual relationship, and a factor in her continuing the relationship was the power he held over her both as a First-Class cadet and as someone who knew she possessed "contraband."<sup>738</sup> Lieutenant General Dallager described this power as the ability to "leverage," stating, "...[a] Fourth-Class cadet has something they're not supposed to have, so a benevolent upperclassperson says hey, I'll take care of that for you. If someone chooses to leverage that, they can apply coercion."<sup>739</sup> In another case, a Fourth-Class cadet was approached via Instant Message by a First-Class cadet she did not know. She later became aware that he was the Officer in Charge (OIC) of the Flying Club, and he offered her opportunities to fly that she would not normally have had as a Fourth-Class cadet. She stated that this was the beginning of a sexual relationship that she did not welcome and which she ultimately reported.<sup>740</sup>

Some cadets and leaders believe that male First-Class cadets use the amnesty system to convince more junior female cadets they can engage in fraternization or other offenses such drinking or leaving the Academy with them and that they will be protected.<sup>741</sup> A focus group of male Fourth-Class cadets observed that in their opinion, upperclass males have the ability to

<sup>733</sup> Statement of Female Fourth-Class cadet, Exhibit 200, at 2 (stating that her roommate received an instant message from an upperclassman asking her to go to his room to clean his closet and she advised her roommate not to go, but there is a female in her squadron who would be afraid not to go); Statement of Female Third-Class cadet, Exhibit 57, at 2; However, a different perspective is voiced by some upperclass females, Memorandum for Record, Group Interview with Female Cadets, Exhibit 218, at 1 (four-degrees are infatuated with 1<sup>st</sup> degree cadets).

<sup>734</sup> Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

<sup>735</sup> Statement of Female Second-Class cadet, Exhibit 109, at 3-4.

<sup>736</sup> Statement of Male First-Class cadet, Exhibit 390, at 2.

<sup>737</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 14, 24.

<sup>738</sup> AFOSI Report of Investigation, AF Form 1168, Witness Statement of Female Third-Class cadet, Exhibit 163.

<sup>739</sup> Statement of Lt Gen Dallager, Exhibit 71, at 93-94.

<sup>740</sup> AFOSI Report of Investigation, AF Form 1168, Witness Statement of Female Fourth-Class cadet, Exhibit 191.

<sup>741</sup> See this Report, Section III.E., Amnesty for Infractions.

blackmail the female Fourth-Class cadets, by taking them to drink and then telling them they can get punished for these offenses.<sup>742</sup>

There are certain factors that may protect a female cadet from being singled out either as a romantic interest or as a target for harassment. These factors include having a strong support system, being an intercollegiate athlete, and being physically or mentally strong, i.e. not showing weakness.<sup>743</sup> Two female cadets interviewed stated that in their opinion, female athletes were less likely to be the target of a sexual assault, because cadets respect strength, intelligence and ability.<sup>744</sup> In particular, female athletes appear to have more resources available to them that make them less isolated: they are with their team more, they are physically out of the squadron and away from the Academy more, and they have a built-in support structure.<sup>745</sup> Of forty-three investigated allegations of sexual assault involving female cadet victims, five (or 12%) of the victims were intercollegiate athletes, although 34% of all female cadets are varsity athletes.<sup>746</sup> Cadets and AOCs agree that assertiveness training might supply all female cadets with the tools they need to protect themselves from sexual assault and victimization. No such training is presently offered, but "Assertiveness Assessments" are planned for female Fourth-Class cadets at the end of 2003 Basic Cadet Training by the Sexual Assault Services Committee, which hypothesizes that the emphasis on compliance in BCT may cause a reduced level of assertiveness in female Fourth-Class cadets. If the planned assessment (to be done at intervals throughout the fourth-class year) confirms this hypothesis, the Sexual Assault Services Committee proposes an Assertiveness Skills 101 class for female Fourth-Class cadets.<sup>747</sup>

Senior leaders have recognized the potential for abuse inherent within the fourth-class system. Lieutenant General Hosmer, former Superintendent, stated that the "typical" case involved abuse of command authority by an upperclassman on a vulnerable Fourth-Class female cadet.<sup>748</sup> Brigadier General Gilbert, immediate past Commandant, also recognized that in any hierarchical structure, there is the potential for abuse, and that in his opinion oversight by the AOCs, MTLs and cadet chain of command served as safeguards to mitigate the risk of abuse.<sup>749</sup> Brigadier General Welsh, his predecessor, saw the same potential for abuse, noting his view that sexual assault is about power, and that abuse of power can translate into assault.<sup>750</sup> Despite the recognized risks, (then) Brig Gen Lorenz, Commandant from 1996 to 1999, viewed the fourth-class system as being an effective and thorough training model for officership, calling it "one of the greatest institutions that was ever invented" because it takes civilians from all classes and backgrounds and teaches them teamwork, loyalty and a building block approach to leadership.<sup>751</sup>

<sup>742</sup> Memorandum for Record, Group Interview, Male Fourth-Class cadets, Exhibit 192, at 2.

<sup>743</sup> Statement of Captain, Faculty Member, Exhibit 26, at 4.

<sup>744</sup> Memorandum for Record, Interview with Female First-Class cadet and Female Second-Class cadet, Exhibit 193, at 2.

<sup>745</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 11 (anecdotal information about female cadets with the least potential to be sexually assaulted: female athletes "guaranteed protection").

<sup>746</sup> Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

<sup>747</sup> Sexual Assault Services Annual Prevention Program Notes, Exhibit 194, at 2.

<sup>748</sup> Statement of Lt Gen Hosmer, Exhibit 45, at 32.

<sup>749</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 95-96.

<sup>750</sup> Statement of Brig Gen Welsh, Exhibit 64, at 65-66; see also this Report, Section III.C., Prevention and Awareness Training.

<sup>751</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 47-48.

A former female graduate, despite reporting that she was the victim of harassment at the Academy, found some value in the fourth-class system, stating that it stresses the importance of the military structure of command.<sup>752</sup>

### C. *Loyalty to Peers Over Values*

The Working Group found as others have observed earlier that cadets have a tendency to place loyalty to peers above loyalty to values. This misplaced loyalty has at times resulted in toleration of inappropriate behavior associated with sexual assault as well as a failure to report assault.

From their first day at the Academy, cadets are taught two competing allegiances: a loyalty to values and a loyalty to peers. As to the former, the Academy stresses the importance of Air Force Core Values and the Academy Honor Code. In contrast, from the earliest stages of Basic Cadet Training, cadets are introduced to the concepts of teamwork and loyalty to peers. The emphasis on loyalty to peers is compounded by the desire of many cadets to feel accepted and avoid being ostracized for taking actions that may be viewed as unpopular by others.

#### 1. Observations from Independent Reviews

The tension between loyalty to values and loyalty to peers was noted by a Character Review Development Panel convened in March 2000 at the request of Lt Gen Oelstrom.<sup>753</sup> The panel, chaired by retired Lt Gen Hosmer (a former Academy Superintendent), observed that cadet loyalty to the unit's goals and ideals was relatively weak in comparison to loyalty to peers, the latter of which was emphasized beginning in Basic Cadet Training (BCT).<sup>754</sup> When the panel reconvened in 2002, the panel expressed that there had been no changes to the BCT program to increase the emphasis on loyalty to the unit's goals, ideals and excellence.<sup>755</sup>

Similar observations were made by an Honor Climate Assessment Task Force chartered in August 2001. Chaired by retired Gen Cams, the Task Force assessed the Academy Honor Code, the Honor System, and conditions surrounding the Honor System at the Academy.<sup>756</sup> The Task Force found that the "non-toleration" clause of the Honor Code<sup>757</sup> was at odds with the military training focus on unwavering loyalty to classmates, particularly as expressed in Basic Cadet Training.<sup>758</sup> While BCT repeatedly stressed the importance of loyalty to peers, it lacked a similar emphasis on the loyalty to values underlying the non-toleration clause.<sup>759</sup>

<sup>752</sup> Memorandum for Record, Interview with Former Academy Cadet, Exhibit 141, at 4.

<sup>753</sup> See Statement of Lt Gen Oelstrom, Exhibit 63, at 19-22.

<sup>754</sup> Academy Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 4.

<sup>755</sup> Academy Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 14.

<sup>756</sup> See Statement of Lt Gen Dallager, Exhibit 71, at 6.

<sup>757</sup> "We will not lie, steal, or cheat, nor tolerate among us anyone who does." Report to the Chief of Staff of the Air Force, Re: The Honor Code and System (Cams Report), Exhibit 197, at 1.

<sup>758</sup> *Id.* at ES-3, ES-4.

<sup>759</sup> *Id.* at ES-3, ES-4. The task force found that some cadets selectively chose to "opt out" of the non-toleration clause. *Id.* at ES-6.

## 2. Perceptions of Academy Leadership

Academy leaders interviewed by the Working Group recognized the significance of the issue of loyalty as understood by cadets. Lieutenant General Dallager stated that cadets are taught that in order to survive, they must stick together and not leave their classmates.<sup>760</sup> He also observed that while holding others accountable to standards is difficult for all age groups, it is even more of a challenge for 18-22 year-olds.<sup>761</sup> Brigadier General Gilbert, the former Commandant, expressed his opinion that for decades the Academy has improperly "beat into our cadets' heads that the greatest loyalty you have is to your classmates."<sup>762</sup> Col Slavec, the Training Group Commander, characterized condonation of misconduct as "the biggest problem we have."<sup>763</sup> She noted in particular condonation of sex in the dorms: "We fight that issue constantly....you have an environment, a culture that condones cohabitation....Nobody turns anybody else in....even though it's a major cadet discipline infraction."<sup>764</sup> The issues of loyalty to peers over loyalty to values was also acknowledged by other Academy leaders, including the Dean of Faculty,<sup>765</sup> the Athletic Director,<sup>766</sup> and the Vice-Commandant.<sup>767</sup>

## 3. Perceptions of AOCs and MTLs

The officers and airmen who interface most directly with cadets also commented on the issue of loyalty to peers and its relationship to toleration of improper and sometimes dangerous behavior. A Group AOC observed that lack of cadet enforcement of the rules is due to misplaced loyalties, which are taught to cadets from the first day they arrive at the Academy.<sup>768</sup> Another Group AOC referred to cadet misunderstandings of loyalty as the "mafia mentality" in which loyalty to friends is more important than loyalty to the Air Force.<sup>769</sup> An MTL echoed a similar sentiment, explaining that loyalty is stressed from the beginning of the Academy experience, which means that cadets don't tell on other cadets in their squadron.<sup>770</sup>

<sup>760</sup> Statement of Lt Gen Dallager, Exhibit 71, at 31.

<sup>761</sup> *Id.*

<sup>762</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 13.

<sup>763</sup> Statement of Col Slavec, Exhibit 23, at 95.

<sup>764</sup> *Id.* at 37-38.

<sup>765</sup> Statement of Brig Gen Wagie, Exhibit 198, at 15 ("I think that probably the one thing among the cadet wing that would be the most beneficial would be for them to somehow change their code of loyalty to say it is important to keep the good name of the squadron, the Academy. It is the right thing to do. It is supporting our values of excellence in service and we shouldn't let our peers go out and smudge our name.").

<sup>766</sup> Statement of Col, Athletic Director, Exhibit 199, at 81 ("[the loyalty to classmates that overrides loyalty to the larger institution] exists here. But these are people that we have to school to have loyalty to the Air Force and the Air Force Academy. You don't automatically walk in on day one and have loyalty to the Air Force.").

<sup>767</sup> Statement of Col Eskridge, Exhibit 124 at 88 ("[Cadets'] loyalties are to their classmates, in some cases, before...this institution, before values....We teach....you [have] to be loyal to your classmate, make a team....you don't outrun your classmate, everybody finishes together....[I]n some cases....that goes too far.").

<sup>768</sup> Statement of Squadron AOC, Exhibit 34 at 7.

<sup>769</sup> Statement of Group AOC, Exhibit 17, at 3.

<sup>770</sup> Statement of Female MTL, Exhibit 39, at 1; *see also* statement of Male MTL, Exhibit 133, at 2 (explaining that loyalty to others over loyalty to core values is especially true when a cadet does not believe in a particular rule like underage drinking).

#### 4. Cadet Toleration of Improper Behavior

Some cadets acknowledged the importance of peer acceptance and loyalty to peers.<sup>771</sup> One female Fourth-Class cadet indicated that loyalty to her classmates was more important than any issue.<sup>772</sup> A female First-Class cadet observed that failure to report alcohol infractions was driven both by a loyalty to the cadets committing the infractions, as well as a fear of being known as the person who turned someone in.<sup>773</sup> A female Fourth-Class cadet explained that nobody reported alcohol infractions because cadets look out for each other, support their classmates, and avoid being scorned, lessons they have been taught in Basic Cadet Training.<sup>774</sup>

Other cadets stated that they would not tolerate what they perceived to be a “serious” offense such as sexual assault.<sup>775</sup> However, the Working Group identified several instances where a misplaced loyalty to peers appears to have factored into cadet reactions upon learning of alleged instances of sexual assault. In one allegation investigated by AFOSI, a victim explained that after she reported to a classmate outside of her squadron that several female cadets had been assaulted by a male cadet, her cadet squadron commander called a meeting and, in the presence of the assailant, reprimanded her for taking the matter outside the chain of command and directed that the matter not leave the room.<sup>776</sup> In another investigated allegation, the victim informed AFOSI that after she reported to her cadet element leader that she had been sexually assaulted by a male cadet, the element leader asked her if reporting the incident was important enough to jeopardize the assailant’s career.<sup>777</sup> Finally, in a separate investigated allegation, a victim informed AFOSI that upon confiding in a male cadet that she had been sexually assaulted, the male cadet told her to remember that “[the assailant] was a really good football player and that he has gotten away with a lot of stuff in the past” and that if she reported the assault the assailant would most likely think of her as a “bitch” and that he would “not learn anything from this.”<sup>778</sup>

#### 5. Efforts to Address Loyalty to Peers

The Academy has attempted to respond to the misplaced emphasis of loyalty to peers by addressing the broader concept of character.<sup>779</sup> Programs developed by the Center for Character Development have focused on character issues and moral dilemmas, including the tension between loyalty to peers and loyalty to values.<sup>780</sup> However, the current Center for Character Development

<sup>771</sup> See also, Memorandum for Record, Group Interview, Male Cadets, Exhibit 161, at 1 (the attitude among cadets is “snitches get stitches”, loyalty over all, including over integrity, is learned in BCT).

<sup>772</sup> Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 18, at 2.

<sup>773</sup> Statement of Female First-Class cadet, Exhibit 100, at 2.

<sup>774</sup> Statement of Female Fourth-Class cadet, Exhibit 200, at 2.

<sup>775</sup> *Id.* at 3 (cadet doesn’t think the system would protect a sexual predator); Memorandum for Record, Interview with Male First-Class cadet, Exhibit 201, at 1 (male cadets wouldn’t tolerate a “rape-friendly” environment); Memorandum for Record, Interview with Female First-Class cadet and Female Second-Class cadet, Exhibit 193, at 2 (they believe most of the male cadets would not tolerate sexual offenders).

<sup>776</sup> AFOSI Report of Investigation, Exhibit 393, at 4.

<sup>777</sup> AFOSI Report of Investigation, Interview of Second-Class cadet, Exhibit 180, at 3.

<sup>778</sup> AFOSI Report of Investigation, Form 1168, Statement of Suspect/Witness/Complainant, Exhibit 202, at 6.

<sup>779</sup> Statement of Col, Exhibit 203, at 4.

<sup>780</sup> There are four mandatory seminars of this nature a cadet will attend during his or her time at the Academy: the Vital Effective Character Through Observation and Reflections (VECTOR) a three-hour workshop held for Fourth-Class cadets, a three to four hour workshop call Respect and Responsibility held last year for Third-Class cadets, the Leaders in Flight Today (LIFT) workshop, a prototype, all-day seminar held this year for Second-Class cadets, and an all-day seminar, CAPSTONE/Academy Character Enrichment Seminar (ACES), held for First-Class cadets. Statement of Chief of Character and Leadership Education, Center for Character Development, Exhibit 204, at 2-4.

Director noted that these programs have only minimal impact on cadets.<sup>781</sup> While the Center for Character Development is beginning new character seminars and recurring training for each cadet class,<sup>782</sup> the initial Character Development Review Panel found no established means of assessing character development at the Academy,<sup>783</sup> and the follow-on panel found that while basic steps toward assessment had been initiated, problems with assessment remained.<sup>784</sup>

The *Agenda for Change* notes that "...loyalty to values and loyalty to institution must be placed above misplaced loyalty to someone who's betrayed our values and our institution."<sup>785</sup> To that end, the *Agenda for Change* asserts that "shunning of cadets who attempt to maintain high standards and report sexual assault will not be tolerated."<sup>786</sup> The *Agenda for Change* also places renewed emphasis on the responsibilities that cadet commanders have for the actions of their subordinates, and makes clear that the senior ranking cadet present in an incident resulting in an allegation of sexual assault will be responsible and accountable for all infractions committed by junior cadets.<sup>787</sup>

#### D. Alcohol

Our review suggests a link between alcohol and misconduct in general, and between alcohol and sexual assault in particular.<sup>788</sup> In an opinion echoed by other Academy leaders, Major General Stephen Lorenz, a former Commandant of Cadets, stated: "Ninety-five percent of all the alleged sexual assaults that I dealt with when I was there were directly related to alcohol...."<sup>789</sup> The Working Group's review<sup>790</sup> of allegations of sexual assault over the last ten years indicated that at least 40% of investigated cadet-on-cadet allegations involved the use of alcohol by the cadet suspect, the cadet victim, or both.<sup>791</sup>

##### 1. Rules on Alcohol.

Three alcohol-related rules apply to cadets at the Academy. First, alcoholic beverages and "related paraphernalia" are not permitted in the dormitories.<sup>792</sup> Second, Academy instructions prohibit cadets from excessive use of alcohol<sup>793</sup> and the misuse of alcohol.<sup>794</sup> Finally, the Uniform

<sup>781</sup> Statement of Col, Exhibit 203, at 4.

<sup>782</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 21-22.

<sup>783</sup> Academy Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 7. The Character Review Development Panel has recommended interim character assessment measures while a longer-term effort to measure character development is ongoing. *Id.* at 7-8.

<sup>784</sup> USAFA Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 9-10.

<sup>785</sup> *Agenda for Change*, Exhibit 4.

<sup>786</sup> *Id.*

<sup>787</sup> *Id.*

<sup>788</sup> Statement of CASIE Program Manager, Exhibit 99, at 6. See also Statement of 10<sup>th</sup> Air Base Wing Legal Office Paralegal, Exhibit 175. The NCOIC of Military Justice and administrator of the Victim/Witness Assistance Program at the Academy stated that alcohol is a problem at the USAFA, that alcohol was involved in all the sexual assault cases she had seen, and that over 70% of all cadet cases seen by her office involved alcohol. *Id.* at 3.

<sup>789</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 20-21. See also Statement of Brig Gen Gilbert, Exhibit 10, at 57, and Statement of Col Stavec, Exhibit 23, at 36-37.

<sup>790</sup> The Working Group did not locate any Academy analysis of the link between alcohol and known sexual assault cases.

<sup>791</sup> Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 9. Of the forty investigated cadet-on-cadet allegations, sixteen (or 40%) involved the use of alcohol. *Id.*

<sup>792</sup> AFCW Instruction 34-601, Dormitory Standards, ¶¶ 2.6 and 4.2.

<sup>793</sup> AFCW Instruction 36-2909, Conduct Standards, ¶ 2.2.4.

Code of Military Justice prohibits underage drinking (by assimilation of state law) and drunk and disorderly conduct.<sup>795</sup>

Despite these clear standards, a succession of Academy leaders have concluded that alcohol at the Academy is a significant problem in itself, and contributes significantly to many forms of cadet misconduct, including incidents of sexual assault.<sup>796</sup>

Interviews indicated that cadets often violate the prohibitions on alcohol; some stated they had observed evidence of alcohol in the dorms.<sup>797</sup> Others stated that cadets have appeared drunk in the dorms.<sup>798</sup> This is further substantiated by our review of the Academy's discipline database, which showed that over the last ten years, of all Class C and D offenses (the most serious offenses) committed by cadets, alcohol offenses are the most common.<sup>799</sup>

## 2. Alcohol and the Social Climate Surveys

Since the 1991-1992 Academic Year, the Academy has administered to cadets an annual Social Climate Survey. In addition to the social climate questions, as early as 1993 the survey contained questions relating to cadets' use of and attitudes towards alcohol. However, the alcohol portion of the climate survey appears to have gone largely ignored in recent years. Neither the Center for Character Development nor the Cadet Counseling Center currently requests the results from the alcohol portion, nor did either organization indicate any ownership of that portion of the survey.<sup>800</sup>

The Academy's awareness and responsiveness to the issue of alcohol appears to have varied considerably over the past ten years. The 1993 Survey was followed by a detailed report which

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<sup>794</sup> *Id.* at ¶ 3.2

<sup>795</sup> UCMJ art. 134

<sup>796</sup> See Statement of Maj Gen Lorenz, Exhibit 52, at 20-21; Statement of Brig Gen Gilbert, Exhibit 10, at 57; Statement of Col Slavec, Exhibit 23 at 44-48; Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 8-9, 14, and 45.

<sup>797</sup> See Statement of Female Fourth-Class cadet, Exhibit 200, at 2; Statement of 10<sup>th</sup> Air Base Wing Legal office Paralegal, Exhibit 175, at 3; Statement of TSgt, Female MTL, Exhibit 31, at 5; Statement of Male First-Class cadet, Exhibit 101, at 3; Statement of First-Class cadet, Exhibit 100, at 2; and Memorandum for Record, Interview with Female Group Superintendent, Exhibit 15, at 2; Memorandum for Record, Interview with Dorm Manager, Exhibit 359, at 1; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221, at 2; Statement of Group AOC, Exhibit 17, at 4 (stating that he thinks the cadet chain of command they are winking at the presence of alcohol in the dorms); *contra*, Statement of Fourth-Class cadet, Exhibit 38, at 2 (reporting that he hasn't seen alcohol in the dorms); and Statement of First-Class cadet, Exhibit 151.

<sup>798</sup> See Statement of First-Class cadet, Exhibit 149, at 2; Statement of Group AOC, Exhibit 17, at 6 (stating that there are Fourth-Class cadets who don't respect First-Class cadets because they see them drunk in the dorms); Statement of Fourth-Class cadet, Exhibit 38, at 2 (reporting that he has seen cadets drunk in the dorms, but hasn't actually seen alcohol in the dorms) and Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57, at 2.

<sup>799</sup> Memorandum for Record, Trend Analysis of Discipline Data, Exhibit 147. Specifically, the summary states:

The offense that predominated throughout the ten-year period is alcohol. This represents an average of ninety-seven alcohol violations per year, or 2.26% of the total population of students in a given year. The 1998-2003 data further show that of the 3023 records, 580 involved alcohol, which is 19% of all class "C" & "D" disciplinary actions.

<sup>800</sup> Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2.

indicated that "[a]ttitudes about alcohol consumption indicate few problems."<sup>801</sup> The summary noted that "about 40% [of cadets] reported they did not drink."<sup>802</sup>

By 1996, the number of cadets reporting that they did not drink remained at close to 40%.<sup>803</sup> However, contemporaneous with the Fall 1996 Climate Survey, the Academy established a task force to examine alcohol use among cadets.<sup>804</sup> An alcohol program was briefed in December 1996, and identified the scope of the alcohol issue using three sources: 1) high school statistics; 2) cadet infractions related to alcohol; and 3) the results of the alcohol section of the Fall 1996 Climate Survey.<sup>805</sup>

The December 1996 briefing included an action plan consisting of immediate, short range, and long range plans.<sup>806</sup> The immediate plan included: 1) a one-time alcohol inspection to include dorm rooms, common areas, cars, and gym lockers; 2) additional special emphasis inspections and a responsible drinking campaign; 3) a crackdown on the use of fake IDs; 4) increased punishments for alcohol-infractions; 5) a wing briefing; and 6) changes to the rules of an on-campus sports bar.<sup>807</sup> The short-range plan contemplated several additional educational and preventative programs. The long-range plan proposed major disciplinary changes that would have required disenrollment for a DUI, providing alcohol to a minor, or use or possession of a fake ID, and a Military Review Committee for other alcohol infractions.<sup>808</sup>

Major General Stephen Lorenz, the Commandant of Cadets from 1996 to 1999, explained that many of these changes were implemented:

[T]here was this place called the Sports Bar, when I was there, in Arnold Hall, and the focus was on bar, not sports. Well, I shut it down for two months, got everybody's attention, and then we raised the level of punishment to 80, 80 and 5, 80 demerits, 80 tours, and 5 months restriction, to any alcohol hit, whether you were an underage drinker and you had one sip or you got a DUI. The other thing....I evolved into, [was that] if you had two alcohol hits while you were there, I recommended disenrollment so we disenrolled five or six cadets while I was there, on this issue.<sup>809</sup>

Major General Lorenz elaborated further on the changes:

We came up with a multi-access attack on alcohol because it would directly relate to a lot of issues.... We had education. We started spending more time educating about, not the evils of liquor, but the effects of liquor, how it affected your life. We...brought in Bacchus, which was a college nationwide organization for abstinence, for responsible drinking. We brought in [a] Hotline [offering free rides to intoxicated cadets].... [E]very cadet who had

<sup>801</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1993-1994, Attachment 1, Summary Report at 4).

<sup>802</sup> *Id.* (Summary Report at 13).

<sup>803</sup> *Id.* (AY 1996-1997, Attachment 3). Approximately 36% of cadets indicated they did not drink.

<sup>804</sup> *Id.* (AY 1996-1997, Attachment 4).

<sup>805</sup> *Id.* (AY 1996-1997, Attachment 4). Although the briefing only provided the results from the Fall 1996 survey, the information on cadet infractions related to alcohol was provided for the three preceding years. This information suggested an upward trend in the number of alcohol-related infractions.

<sup>806</sup> *Id.*

<sup>807</sup> *Id.*

<sup>808</sup> *Id.*

<sup>809</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 21.

an alcohol hit met with me on Saturday mornings, including the entire cadet leadership, their entire chain of command.<sup>810</sup>

Despite the numerous changes implemented following the alcohol task force and alcohol results of the Fall 1996 Climate Survey, alcohol results from subsequent surveys do not appear to have received similar attention.

### 3. Alcohol and Fourth-Class cadets.

There are indications that female Fourth-Class cadets who consume alcohol are particularly vulnerable to sexual assault.<sup>811</sup> The Academy's Victim Advocate Coordinator illustrates this point in her sexual assault awareness training when she highlights to cadets the two main risk factors involved in sexual assault are "alcohol [and] fraternization. Those are the two biggies."<sup>812</sup> This observation probably stems from the fact that when a female Fourth-Class cadet drinks and fraternizes, she is engaging in two prohibited behaviors: underage drinking (a violation of the UCMJ<sup>813</sup> and cadet conduct standards) and cadet fraternization (a violation of cadet conduct standards). "Fraternization" at the Academy generally refers to dating between a fourth-class (freshman) cadet and an upperclass cadet, although the proper term is "unprofessional relationship."<sup>814</sup>

With her judgment perhaps impaired from consuming alcohol, and possibly feeling pressure from the more senior cadet to violate several Academy rules, the junior cadet could find herself in a leverage situation where she may feel unable to decline (or later report) sexual advances from the upperclassman. In addition to leading to sexual activity the cadet may not have wanted, such circumstances greatly complicate the legal practicalities of proving a criminal offense where the issue of consent, and a suspect's mistake of fact regarding consent, may be significant issues.<sup>815</sup>

### 4. Reporting Alcohol Abuse.

Enforcement of the rules regarding alcohol depends on adequate reporting of offenses. According to Academy regulations, "[a]ll Academy personnel have a responsibility to report known outstanding conduct or suspected violations of established standards to the cadet's chain of command."<sup>816</sup> Cadets are required to report infractions committed by other cadets and are even required to self-report infractions they commit.<sup>817</sup> Those cadets who fail to report observed

<sup>810</sup> *Id.* at 22.

<sup>811</sup> Seventeen of the forty investigated allegations of a cadet-on-cadet assault involved a cadet assailant who was higher in class rank than the cadet victim. Nine of these victims were female Fourth-Class cadets. Of those nine cases, four involved alcohol. Data of Sexual Assault Allegations (Victim Information), Exhibit 383. These numbers are not sufficiently high to draw statistical conclusions; however, from an anecdotal point of view the numbers illustrate the point made by the Victim Advocate Coordinator that the combination of alcohol and fraternization increases the risk of sexual assault to female cadets. Statement of Victim Advocate Coordinator, Exhibit 50, at 75.

<sup>812</sup> *Id.*

<sup>813</sup> Underage drinking is a violation of Colorado law. See COLO. REV. STAT. §18-13-122. This law applies to those subject to the UCMJ, through the Assimilative Crimes Act, 18 U.S.C. §13 and UCMJ art. 134.

<sup>814</sup> AF Cadet Wing Instruction 36-2909, ¶ 3.7.

<sup>815</sup> See this Report, Section III.B., The Academy's Definition of Sexual Assault" and Section VI.F., Review of Sexual Assault Cases.

<sup>816</sup> AF Cadet Wing Instruction 51-201, ¶ 3.1.

<sup>817</sup> *Id.*

violations can be sanctioned for their failure to do so.<sup>818</sup> Despite these requirements, the Working Group found that cadets are often unwilling to report other cadets for violations.<sup>819</sup> Particularly with regard to alcohol offenses, cadets may be unwilling to report violations because they may not believe there is anything wrong with the misconduct involved.<sup>820</sup>

## 5. Enforcement.

Even though evidence suggests that members of the Academy staff enforce the rules against possession of alcohol in the dorms when they are aware of specific violations,<sup>821</sup> there is a perception among some that alcohol rules are not enforced.<sup>822</sup>

Academy staff appear to lack a complete understanding of the basic rules relating to alcohol and how those rules apply to cadets. Even though those interviewed recognized that cadets could be punished for possession of alcohol in the dorms or for underage drinking, when asked about potential sanctions for alcohol violations, almost no permanent party interviewed expressed awareness that cadets could be punished under the UCMJ for being drunk in the dorms or elsewhere on Academy grounds.<sup>823</sup> Instead most permanent party focused on punishing cadets for violating the Academy's prohibition against having alcohol on Academy grounds.<sup>824</sup>

## 6. Treatment.

At present, the Academy has a three-tier system for helping cadets who may have alcohol (or drug) related problems: 1) an initial assessment known as SHARP (Stronger Health Through Alcohol Reduction Program);<sup>825</sup> 2) the Cadet Counseling Center; and 3) the Alcohol Drug Abuse Prevention and Treatment (ADAPT) Program.<sup>826</sup>

<sup>818</sup> *Id.* at ¶ 3.2.6.3. A cadet guilty of condonation (failure to report a known offense) "may receive demerits and sanctions up to the amount awarded to the cadet who committed the actual violation." (Emphasis added.)

<sup>819</sup> See this Report, Section IV.C., Loyalty to Peers Over Values, and Section III.D., The Unique Reporting System.

<sup>820</sup> See Statement of Brig Gen Wagie, Exhibit 198, at 13; Statement of Fourth-Class cadet, Exhibit 200, at 3 (stating that even though there is a lot of underage drinking, it isn't a problem.); and Statement of MTL, Exhibit 133, at 2.

<sup>821</sup> Statement of Female MTL, Exhibit 31, at 5; Statement of Group AOC, Exhibit 17, at 4; Statement of Squadron AOC, Exhibit 34, at 7 (stating that the rules on alcohol are enforced by the staff with regularity, but by varying degrees by the cadets themselves).

<sup>822</sup> The lack of enforcement can be inferred from numerous factors, including the presence of alcohol containers regularly found at the Academy. Memorandum for Record, Interview with Sijan Hall Manager, Exhibit 359. See also Statements of Squadron AOC, Exhibit 36, at 4; Female MTL, Exhibit 39, at 3.

<sup>823</sup> UCMJ art. 134 (Drunk and Disorderly Conduct).

<sup>824</sup> Statement of Col Slavec, Exhibit 23, at 46 (discussing that there is nothing you can do about drunk cadets in the dorms, as long as they were drinking legally before they got to the dorms and they didn't drive under the influence of alcohol); Statement of Squadron AOC, Exhibit 36, at 4; Statement of Col Eskridge, Exhibit 124, at 55 ("[T]here is nothing against the law from having too much to drink assuming you don't do anything else.") Some interviewed suggested that more comprehensive inspections of cadet rooms would help in finding more alcohol in rooms and would have a deterrent effect upon cadets. See Statement of Female MTL, Exhibit 31, at 5. Others stated that recent alcohol amnesty sessions (allowing cadets to turn in contraband alcohol without penalty) may send the wrong message to cadets regarding rule enforcement. See Statement of Squadron AOC, Exhibit 35, at 6; Statement of Group AOC, Exhibit 17, at 4.

<sup>825</sup> SHARP was implemented at the Academy in 2001 in response to the high rate of alcohol incidents at the Academy. Memorandum for Record, Interview with NCOIC, Alcohol and Drug Abuse Prevention and Treatment Program, Exhibit 362, at 1.

<sup>826</sup> *Id.*

Under the SHARP program, all cadets complete an assessment shortly after they arrive at the Academy to determine whether they fall into a category that places them at a high risk for having alcohol problems.<sup>827</sup> SHARP personnel then take intervention steps that are geared towards helping the cadet avoid alcohol abuse. A cadet's involvement with the SHARP program is voluntary. The SHARP program is experimental, is operated by two contract employees, and has been in existence at the Academy for only two years.<sup>828</sup>

Cadets are referred to the Cadet Counseling Center for alcohol-related matters after a cadet has been involved in some sort of alcohol misconduct. The ADAPT Program is an Air Force program that ranges from six months of awareness training to enrollment in an in-patient treatment program. Cadets are referred to either the Cadet Counseling Center or the ADAPT program, depending upon the level of seriousness of their alcohol incident. The more serious cases are referred to ADAPT.<sup>829</sup>

The ADAPT program, which has only informally monitored trends over the last year and a half, has not performed any formal trend analysis over the last year.<sup>830</sup> No one from the ADAPT program has recently assisted any cadets who were known to have been the victim or perpetrator in a sexual assault incident. However, if that were the case, they would brief that information to the 10<sup>th</sup> Air Base Wing Commander during the quarterly climate assessment briefing.<sup>831</sup>

### *E. Dormitory Environment*

A significant number of investigated allegations of sexual assault occurred in the dormitories. Of the forty investigated allegations of sexual assault involving both a cadet suspect and victim, twenty-two (or 55%) occurred in the dorms.<sup>832</sup> Additionally, in the sexual assault portion of the Social Climate Surveys conducted in years 1998, 2000, 2001 and 2002, of the cadets who reported being sexually assaulted, an average of 52% of those assaults occurred in the dorms.<sup>833</sup> With that in mind, the Working Group examined factors related to the dormitory environment.

#### *I. Dormitory Characteristics*

There are two co-ed dorms at the Academy, Vandenberg Hall and Sijan Hall. Both are similar in layout and appearance.<sup>834</sup> Cadets are normally housed two to a room, although some Fourth-Class cadets are assigned three to a room.<sup>835</sup> Each room is approximately thirteen feet wide

<sup>827</sup> SHARP personnel look at specific background factors, like whether there is a family history of alcohol problems, to make this determination.

<sup>828</sup> Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 19-22. The contract is due to expire in 2004. *Id.*

<sup>829</sup> Memorandum for Record, Interview with NCOIC, Alcohol and Drug Abuse Prevention and Treatment Program, Exhibit 362, at 1-2.

<sup>830</sup> *Id.* at 2.

<sup>831</sup> *Id.*

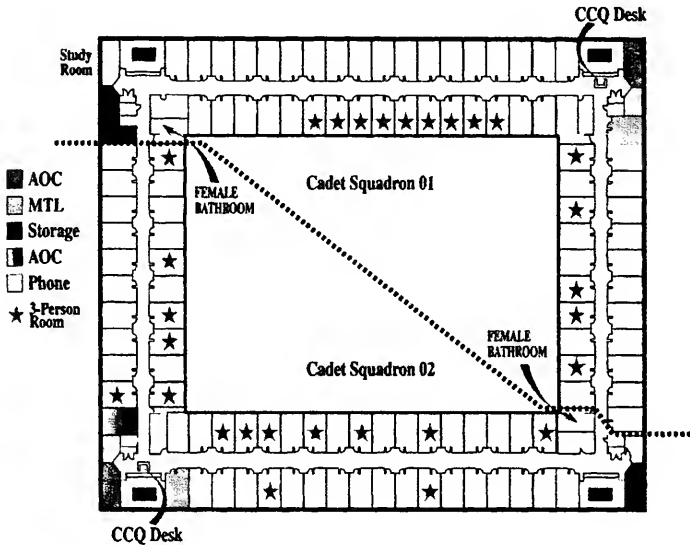
<sup>832</sup> Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 9.

<sup>833</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

<sup>834</sup> Vandenberg is the larger of the two dorms with 1325 bedrooms while Sijan has 936 bedrooms. USAFA Fact Sheet, Exhibit 402, at 4.

<sup>835</sup> However, an ongoing renovation in Sijan Hall has 200 rooms out of service, which requires several rooms in both dorms to be designated as three-person rooms. Three person rooms are generally assigned to Fourth-Class cadets.

and eighteen feet long. A typical room contains two large closets, a counter with a built-in sink, a large mirror and a medicine cabinet. Rooms also have twin-size modular beds, and a dresser and a desk for each cadet. Dorm rooms do not have private bathrooms, but rather central bathrooms located throughout the dorm. Squadron dorm rooms are generally in a series of halls, in a rectangular shape called quads. In each quad there are male bathrooms in each corner of the quad and a total of two female bathrooms on opposite corners of the quad. (See diagram of typical cadet dormitory area, following below.)



## 2. Room Assignments

The 34<sup>th</sup> Support Group is responsible for allocating dorm rooms to each cadet squadron. Cadet squadron commanders are responsible for making or approving room assignments.<sup>836</sup> Cadets can only room with members of the same sex and usually members of the same class. Exceptions can be made to allow cadets to room with members one class higher or lower.<sup>837</sup> Room assignments are made based on individual squadron and group rules within the parameters outlined above. Cadets are billeted within their squadron area and to the extent possible within their respective flights.<sup>838</sup> Cadets holding leadership positions are assigned rooms first to allow them to

Memorandum for Record, Interview with Dormitory Manager, Exhibit 359. AF Cadet Wing Instruction 34-601, ¶ 3.4., Exhibit 13.

<sup>836</sup> AF Cadet Wing Instruction 34-601, ¶ 3.4., Exhibit 13.

<sup>837</sup> *Id.* ¶ 3.5.3.

<sup>838</sup> A flight is a subunit of a squadron.

be close to their colleagues and cadet commanders.<sup>839</sup> A common method for assigning rooms to members who are not in leadership positions is First-Class cadets get first choice of the remaining rooms within the squadron area, then Second-Class cadets get next choice, then third class and Fourth-Class cadets are assigned the remainder of the rooms.<sup>840</sup>

Air Force regulations require male and female enlisted and officers to be separated by floor, wing or hallway when dormitories have central bathrooms.<sup>841</sup> The Academy does not have a waiver to these regulations. However, the office of primary responsibility for dormitories at Headquarters Air Force stated "it is not our position that cadet dorms must use AF dormitory policy because the Academy has different issues, policies and goals from those which pertain to enlisted personnel or unaccompanied/single officers" as such, the decision on how to house cadets can be determined locally in conjunction with Air Force leadership approval.<sup>842</sup>

When women first attended the Academy, their rooms were separate, and shortly thereafter they were grouped together within squadron areas near the women's bathroom.<sup>843</sup> For some time, male and female cadets at the Academy have not been separated in the dorm, but rather intermingled with little consideration given to grouping female cadets in close proximity to the female bathrooms.<sup>844</sup> The current assignment method allows female cadets to be housed next to upperclass males and requires some women to walk long distances to the showers in their robes or athletic wear. Air Force regulations for officer and enlisted dorms with central bathrooms require a partition to prevent visual access by members of the opposite sex.<sup>845</sup> While some Air Officers Commanding (AOCs) report that they review and approve room assignments made by cadets and apply consideration to keep women close to the bathrooms, these considerations are not broadly implemented.<sup>846</sup> A Group Military Training Leader (MTL) thought that MTLs should have more oversight of the room assignment process to capitalize on cadet personalities, strengths and weakness.<sup>847</sup>

The views about whether women should be grouped together in the dorms varied. A focus group of fourth-class female cadets recommended grouping female cadets together in the dorms.<sup>848</sup> Other female cadets recommended against segregating female cadets.<sup>849</sup> A Group MTL recommended grouping female cadets together to provide more oversight and visibility of the women's rooms.<sup>850</sup> After plans were announced to relocate females closer to the bathrooms while maintaining unit integrity, several cadets voiced concerns about the new policy. Many believed that

<sup>839</sup> AF Cadet Wing Instruction 38-101, ¶ 1.9.

<sup>840</sup> Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 1; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357, at 2.

<sup>841</sup> Air Force Instruction 32-6005, ¶ 1.5.4.

<sup>842</sup> See E-mail, Dormitory Policy, April 9, 2003, Exhibit 375 (regarding unaccompanied housing policy at the Air Force Academy).

<sup>843</sup> See Statement of Female Academy Graduate, Exhibit 14.

<sup>844</sup> Memorandum for Record, Interview with Group Superintendent, Exhibit 15. Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357; Memorandum for Record, Interview with Group Superintendent, Exhibit 15.

<sup>845</sup> Air Force Instruction 32-6005, ¶ 1.5.4.4.

<sup>846</sup> Statement of Squadron AOC, Exhibit 34, at 2-3; Memorandum for Record, Interview with Group Superintendent, Exhibit 15; see also Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357.

<sup>847</sup> Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 1.

<sup>848</sup> Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

<sup>849</sup> Memorandum for Record, Interview with First-Class cadets, Exhibit 111, at 1; Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57.

<sup>850</sup> Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

separating male and female cadets would be detrimental to teamwork and gender relations and cause females to be treated differently.<sup>851</sup>

Fourth-class female cadets report that living side-by-side with upperclass males sometimes blurs the relationship between official duties and social contact. On some occasions, a relatively casual atmosphere is presented by upperclass males living next door to female Fourth-Class cadets.<sup>852</sup> Some fourth-class female cadets find it difficult to respond to the sometimes casual gestures of the upperclassmen. They fear they will get in trouble if they respond or act in the same manner as their upperclass neighbors.<sup>853</sup>

The *Agenda for Change* will result in clustering women near their bathrooms while keeping them within their squadrons, consistent with Air Force Instruction and practice.

### 3. Officer and NCO Presence in the Dorms

Offices for Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) are located within the dorms. While these members may work long hours, they normally depart their duty sections in the early evening during the week and by mid-afternoon on training weekends.<sup>854</sup> To provide additional supervision in the dorms, each squadron has a Cadet-In Charge of Quarters (CCQ). The CCQ is typically a Third-Class cadet and is the AOC's official representative in the dorms before and after duty hours.<sup>855</sup> The CCQs oversee their respective squadron dormitory areas from 6:00 AM until Taps, plus thirty minutes.<sup>856</sup> Each CCQ is centrally located in the squadron area and has a clear view of the dorm rooms within their respective squadrons. CCQs are responsible for maintaining security in the dorms, checking unauthorized or unescorted visitors, and enforcing dorm standards.<sup>857</sup> While the CCQs are charged with enforcing dorm standards, they have little control over first and Second-Class cadets who are superior to them in rank, making it difficult for them to enforce standards.<sup>858</sup> The CCQs depart their duty location after the evening accountability inspection called Dorm Inspection, which is conducted at Taps.<sup>859</sup> This leaves the dorms without direct supervision after 11:00 PM on weeknights and 2:00 AM on non-training weekends until 6:00 AM the following morning.

After normal business hours, there has been little officer or NCO presence in the dormitories. Prior to January 2003, a single Officer of the Day and cadet Senior Officer of the Day patrolled from 7:00 PM until 11:30 PM, after which time they were permitted to sleep in the

<sup>851</sup> Memorandum for Record, Interview with First-Class cadets, Exhibit 111, at 1; Statement of Fourth-Class cadet, Exhibit 200, at 4.

<sup>852</sup> Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

<sup>853</sup> *Id.*

<sup>854</sup> Statement of MTL, Exhibit 39, 2; Memorandum for Record, Interview with Group MTL, Exhibit 15, at 3.

<sup>855</sup> AF Cadet Wing Instruction 38-102, ¶¶ 3.1 and 3.4.

<sup>856</sup> Taps is sounded at 10:30 p.m. during the week, 12:00 a.m. on Fridays preceding training weekends, and at 1:30 a.m. on non-training weekends, IAW AF Cadet Wing Instruction 38-102 ¶ 3.4.

<sup>857</sup> AF Cadet Wing Instruction 38-102, ¶¶ 3.1 and 3.6.17.

<sup>858</sup> See Memorandum for Record, Interview with Group MTL, Exhibit 15, at 1 and *see generally* Memorandum for Record, group interview with Female Fourth-Class cadets, Exhibit 24.

<sup>859</sup> Dorm Inspection is a commander's accountability tool where cadets are required to be in their rooms at Taps. The CCQ and the squadron duty officer (First-Class cadet) physically go to each room and verify that each cadet is in their room. AF Cadet Wing Instruction 38-102 ¶ 2.3.

training wing operations center, located in the cadet area.<sup>860</sup> The patrol area includes Vandenberg and Sijan Halls, the cadet field house, the library, Mitchell and Arnold Halls, the cadet chapel, cadet parking lots, and the gym.<sup>861</sup> The Officer of the Day and the cadet Senior Officer of the Day are responsible for conducting random and periodic inspections of the cadet area facilities, dormitories and adjacent parking lots at least three times, once during the Academic Call to Quarters (ACQ),<sup>862</sup> once at Taps, and once more some time after Taps.

The after-hours patrols were changed to twenty-four hour patrols in January 2003. This was reportedly done because the Commandant was concerned that cadets were not returning to their rooms at Taps, but were staying in the stairwells talking on cell phones, drinking alcohol in the dorms, and cadets going "over the fence" (absent without leave).<sup>863</sup> To add additional officer/NCO presence in the dorms, on March 22, 2003, four additional Officers of the Day (one from each group) were added and required to patrol the cadet area twenty-four hours a day.<sup>864</sup> Although AOCs and MTLs were present in the evenings on a limited basis, the previous arrangements with only one Officer of the Day and cadet Senior Officer of the Day patrolling the entire cadet area was insufficient, especially on the weekend.<sup>865</sup> Under this system, the effective presence of officers or NCOs in the dorms after hours was limited, and for practical purposes, the dorms were subject to the authority of cadets.

#### 4. Access to Rooms by Cadets

Fourth-Class cadets are not provided with clear guidance as to when their doors must remain open and when they can lock their doors. In one Cadet Wing Instruction it states cadets may lock their doors while in their rooms.<sup>866</sup> In another Instruction, it states Fourth-Class cadets may be required to have their dormitory room door open when they are occupying their rooms from 6:20 AM until Academic Call to Quarters on duty days.<sup>867</sup> Interviews indicate that these policies are implemented differently depending on the squadron a cadet is assigned to.<sup>868</sup> In practice, Fourth-Class cadets are generally required to keep their doors fully open from 6:20 AM until either academic call to quarters or Taps and may not lock their doors unless changing clothes or sleeping. Additionally, there is no clear guidance as to when an upperclass cadet can enter a Fourth-Class cadet's room.<sup>869</sup>

Prior to March 2003, members of the opposite sex could be in the same room to conduct official or unofficial business. They were required to keep their door open, or ajar with the deadbolt

<sup>860</sup> See Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221; Statement of Col Eskridge, Exhibit 124, at 81.

<sup>861</sup> 34<sup>th</sup> Training Wing Operating Instruction 10-1. Officer Of The Day (OD) Program, Exhibit 405, at 1; see Statement of Col Eskridge, Exhibit 124, at 82; and Memorandum for Record, Deputy Group AOC, Exhibit 221.

<sup>862</sup> Academic Call to Quarters is time for cadets to study and runs from 7:00 p.m. until Taps.

<sup>863</sup> See generally Statement of Col Eskridge, Exhibit 124, at 81; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221; and Statement of Brig Gen Gilbert, Exhibit 10, at 82.

<sup>864</sup> See Statement of Col Eskridge, Exhibit 124, at 81; Memorandum for Record, Interview with Deputy Group AOC, Lt Col, Exhibit 221; and Statement of Col Slavec, Exhibit 23, at 179-181.

<sup>865</sup> See Statement of Male Group AOC, Exhibit 17. See Group Interview with Chaplains, Exhibit 220. See also Statement of Squadron AOC, Exhibit 36.

<sup>866</sup> AF Cadet Wing Instruction 31-101, § 3.2.1.

<sup>867</sup> AF Cadet Wing Instruction 36-3004, § 5.2.2.2.3.

<sup>868</sup> See Statement of Female Fourth-Class cadet, Exhibit 200; Memorandum for Record, Interview with Group MTL, Exhibit 15; and Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221.

<sup>869</sup> E-mail, Re: Room Arrangements, from 34 TRG/PE to Working Group, Exhibit 222.

fully extended. Upperclass cadets in a room with a fourth-class (freshman) cadet (same sex or opposite sex) in a one-on-one situation were required to keep the door fully open.<sup>870</sup> In March 2003, the Training Wing published a training alert, which requires cadets to keep the door completely open when members of the opposite sex are in the room. They are no longer allowed to keep the door ajar with the deadbolt extended. The alert allows upperclassmen to enter a Fourth-Class cadet's room only for official business. The *Agenda for Change* altered this by requiring an open door whenever a non-roommate is in the room, male or female.<sup>871</sup> The *Agenda for Change* also requires opposite sex cadets to knock on the door and announce themselves, and wait for the door to be opened by the cadet occupying the room before they can enter.

## 5. Inspections

Cadets experience several different types of inspections while at the Academy. The most intrusive of these inspections are Morale, Welfare, and Health (MWH) inspections. The purpose of these inspections is to determine and ensure military fitness, good order and discipline, and health and safety of the Cadet Wing.<sup>872</sup> These inspections are normally conducted once a month by AOCs and MTLs and are usually done early in the morning. The inspectors go through the rooms, drawers, trunks, cars, bikes, and lockers of the cadets who are selected for inspection.<sup>873</sup> They look for any violation of Cadet Instructions including, alcohol, drugs, or other prohibited items.<sup>874</sup> The inspection occurs without notice on an undetermined number of rooms in each squadron.<sup>875</sup> Each of the inspections performed in academic year 2003 have included two rooms per squadron, impacting approximately 140 cadets. Of the four inspections conducted, two were performed on the 13<sup>th</sup> of the month and two on the 14<sup>th</sup> of the month, which could contribute to allowing cadets to predict when an inspection will occur.<sup>876</sup>

At the beginning of the 2003-2004 academic year, the Training Wing changed the policy for MWH inspections. Under the previous policy, two entire squadrons were inspected, involving approximately 240 cadets. According to the Training Group, the reason for the change was so that members from every squadron feel "at risk" for an inspection verses limiting the inspection to two squadrons.<sup>877</sup> However, statements from AOCs and MTLs indicate that the previous inspection system involved more cadets, was less predictable and was more effective.<sup>878</sup> These inspections have only been conducted during the week, excluding the weekends where cadets have more free time and a higher propensity to have contraband in their rooms. There is evidence that alcohol is

<sup>870</sup> AF Cadet Wing Instruction 36-2909, ¶ 3.7.4.1.8. Exhibit 12.

<sup>871</sup> AF Cadet Wing Instruction 36-2909, Training Alert 03-01 Dorm Room Doors, Exhibit 223. See 34th Training Group Operating Instruction 36-1, Procedures for Cadet Wing Morale, Welfare, and Health Inspections, Summary of Revisions.

<sup>872</sup> 34th Training Group Operating Instruction 36-1, ¶ 1.1.

<sup>873</sup> *Id.*

<sup>874</sup> *Id.* at ¶ 1.2. See also Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 2.

<sup>875</sup> 34th Training Group Operating Instruction 36-1, ¶ 1.4.

<sup>876</sup> See Inspection Reports, Morale, Welfare, and Health Inspections for November 14, 2002, January 14, 2003, February 13, 2003, and March 6, 2003, Exhibit 16.

<sup>877</sup> E-mail Re: MWH Inspections from Deputy Commander, 34th Training Group to Working Group, (March 31, 2003) Exhibit 16. "Two rooms per squadron were randomly inspected each time. We moved to this strategy vice just doing two entire squadrons so everyone feels 'at risk.'" *Id.*

<sup>878</sup> Statement of Group AOC, Exhibit 17; Statement of TSgt, Female MTL, Exhibit 31, at 5.

prevalent in the dorms,<sup>879</sup> however, these inspections have been ineffective in finding alcohol.<sup>880</sup> In one statement, a Fourth-Class cadet suggested that inspections would be more effective on the weekends than during mid-week.<sup>881</sup>

## 6. Cadet Area Security

Only authorized individuals who have a valid need to be in the cadet area are allowed access (e.g., faculty, staff, contractors, etc.). Security Forces members man three entry control points (ECPs) that allow access to the cadet area. Each of the buildings on the lower level in the cadet area has cipher locks that require security codes to gain access. However, doors to facilities on the Terrazzo level (common outdoor area between dorms) are open twenty-four hours a day to allow cadets free and easy access to classrooms and dormitories. According to Security Forces members, this arrangement is desired by the 34<sup>th</sup> Training Wing, and the manned entry control points provide enough security to allow the doors on the Terrazzo level to remain open.<sup>882</sup>

While Security Forces provide patrols and security for the installation as a whole, they are discouraged from going into the cadet dormitories. The Commandant asked the Security Forces commander to limit the security forces presence in the dormitories, as it was not conducive to the dormitory environment. He also requires Security Forces personnel to advise the Training Group when they enter the cadet area.<sup>883</sup> While the Training Group and Wing commanders are of the opinion that the relationship is acceptable, Security Forces personnel believe they are intentionally excluded from investigating cadet infractions that are considered crimes at other Air Force bases. Additionally, they believe that it is inappropriate to be required to seek permission from the Training Group commander to investigate crimes involving cadets.<sup>884</sup>

Security Forces personnel report they are virtually excluded from police activities in the Cadet Wing. They relate that crimes such as violent assaults and other criminal activity are handled within the Cadet Wing rather than involving Security Forces personnel, or they are notified of criminal activities well after the fact, diminishing their capability to investigate crimes.<sup>885</sup>

## *F. Support and Role Models for Female Cadets*

The small number of women at the Academy may isolate some female cadets. Although the Academy has integrated women into the Academy's programs, the Working Group found no Academy-wide mentoring program for women or men. Absent such support female cadets may be less inclined to report instances of misconduct by male cadets.

<sup>879</sup> Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 3; Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 224; Statement of Cadet First Class, Exhibit 100; Memorandum for Record, Interview with Lt Col Faculty Member, Exhibit 225, at 3; Memorandum for Record, Interview with Group AOC, Exhibit 15, at 2.

<sup>880</sup> Inspection Reports, Morale, Welfare, and Health Inspections for, November 14, 2002; Jan 14, 2003; February 13, 2003; March 13, 2003, Exhibit 16.

<sup>881</sup> Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 18.

<sup>882</sup> Memorandum for Record, Interview with Commander, 10<sup>th</sup> Security Forces Squadron, Exhibit 226.

<sup>883</sup> See Statement of Brig Gen Gilbert, Exhibit 10, at 107-108; see Statement of Commander, 10<sup>th</sup> Security Forces Squadron, Exhibit 178, at 5.

<sup>884</sup> See Statement of Commander, 10<sup>th</sup> Security Forces Squadron, Exhibit 178, at 2-4.

<sup>885</sup> *Id.* at 6. These concerns have been referred to the Air Force Inspector General for further review.

Of the approximately 4,000 cadets<sup>886</sup> at the Air Force Academy, about sixteen percent are female<sup>887</sup> and 1,200 are freshmen.<sup>888</sup> The students are divided into squadrons of approximately 110 cadets,<sup>889</sup> of which fifteen to twenty are female, which equates to approximately four to five female cadets per class year in each squadron. These low numbers of female cadets dispersed through the Cadet Wing can lead to feelings of isolation among them.

There are also relatively few female role models in the Training Group. For example, of the sixty-four Air Officers Commanding (AOC) and Military Training Leaders (MTL), only one AOC<sup>890</sup> and six MTLs are women.<sup>891</sup> Female cadets may perceive the lack of role models in the areas of personal and professional development. However, it is equally important that male cadets interact with women, as male cadets will also enter the active duty Air Force as officers expected to take orders from females, command females, and work as equals with females.<sup>892</sup>

While some report feelings of isolation,<sup>893</sup> there are mixed views on the degree of support for female cadets from other women. Some female cadets find a lack of support,<sup>894</sup> while others were able to forge strong bonds.<sup>895</sup> There are also indications there may be a stronger loyalty between cadets of the same class year, regardless of gender, than between female cadets from different classes.<sup>896</sup> This may be a result of team loyalty emphasized in Academy training.

A number of graduates and instructors express the view that the Academy does not foster a culture of support and mentoring for female cadets.<sup>897</sup> There are currently no formal mentoring

<sup>886</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, at 28 (2002-2003 ed.) Exhibit 6.

<sup>887</sup> E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, at 2.

<sup>888</sup> Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 21, Table 5.

<sup>889</sup> UNITED STATES AIR FORCE ACADEMY CATALOG, at 28 (2002-2003 ed.) Exhibit 6; and E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, at 2.

<sup>890</sup> There are no female Group AOCs. See Statement of Col Slavec, Exhibit 23, at 147.

<sup>891</sup> Statement of 34th Training Wing Superintendent, Exhibit 54, at 1.

<sup>892</sup> Memorandum for Record, Interview with Former Academy Cadet, Exhibit 141, at 3. (male cadets need to interact with female cadets in a healthy positive way because women are an ingrained part of the Air Force).

<sup>893</sup> *Id.* (Academy system isolates women); Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 230 (if female Fourth-Class cadets had more choices for roommates they could more easily create a support system).

<sup>894</sup> Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84 (states that she hears about competition between female cadets). See also Focus Group Interview with Female First and Second-Class cadets, Exhibit 218, who view female Fourth-Class cadets as "infatuated" with male First-Class cadets. Upperclass female cadets may view junior female cadets as "competition; Memorandum for Record, Interview with Female Graduate, Exhibit 141 (states that there is a feeling that all women must overcome all female mistakes everyday on everything...if a female cadet does not do the number of push-ups, male cadets will be tougher on all the other female cadets); Memorandum for Record, Interview with Anonymous Female Third-Class cadet, Exhibit 219 (found upperclass female cadets "unapproachable").

<sup>895</sup> Statement of Female Fourth-Class cadet, Exhibit 200, at 2 (informal support exists from upperclass female cadets); statement of Female Squadron AOC, Exhibit 127, at 4 (AOC who told the upperclass female cadets in her squadron to take care of the lower class female cadets); Statement of Female MTL, Exhibit 31, at 5.

<sup>896</sup> Statement of Female Second-Class cadet, Exhibit 138 (female cadet supported by male and female cadets from her class after harassment from upperclass male); Memorandum for Record, Interview with Female Graduate, Exhibit 141, at 3.

<sup>897</sup> Statement of Female Captain, Faculty Member, Exhibit 26; Memorandum for Record, Group Interview with Chaplains, Exhibit 220; Memorandum for Record, Interview with Female Graduate, Exhibit 141; Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 231; Statement of Female Chief Master Sergeant, Exhibit 54.

programs for female cadets.<sup>898</sup> A female cadet support group organized by graduates, faculty and cadets called "Babes in Blue"<sup>899</sup> was in existence for some time, but appears to have foundered.<sup>900</sup> Brigadier General Gilbert, immediate past Commandant, stated there has been a "miserable history" of mentoring in general, for both male and female cadets, at the Academy.<sup>901</sup>

The lack of female support may affect the status of sexual assault victims. Victims may feel uncomfortable, and without female support may be inhibited from reporting sexual assaults, harassment, or other gender-based offensive behavior. For example, some interviews suggest that female cadets will report sexual assaults to one of the two female chaplains over a male chaplain.<sup>902</sup> The desire for acceptance by the larger majority male cadet population may also inhibit female cadets from reporting.<sup>903</sup> For example, some female officers and chaplains observed a desire on the part of some women to be "one of the boys," and raising issues such as sexual assault and harassment does not allow this.<sup>904</sup>

The *Agenda for Change* contemplates the lack of female role models, mentoring opportunities, and support for women. The *Agenda for Change* requires the Commandant to establish a cadet-mentoring program, where each male and female Second-Class cadet will mentor at least one Fourth-Class cadet of the same sex and from a squadron other than their own.<sup>905</sup>

### G. Experience and Qualifications of AOCs and MTLs

#### 1. Air Officers Commanding

Interviews with senior leadership indicated general dissatisfaction with the experience and command qualifications of officers being assigned as Air Officers Commanding (AOCs). Lieutenant General Dallager believes that the AOCs did not represent "the top five or ten percent individuals," and was concerned there was not a balanced representation of career fields among AOCs.<sup>906</sup> Even earlier, Brig Gen Welsh had seen the qualifications of AOCs as an issue, attributing

<sup>898</sup> An official sponsorship program open to cadets of all years and both genders does exist. Faculty members, permanent party members, and civilians serve as sponsors. Brochure, Cadet Sponsorship Program 2002-2003, Exhibit 232, at 2.

<sup>899</sup> Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40.

<sup>900</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 33; Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110 (Chief of Human Relations at the Center for Character Development, which teaches human relations to all cadet classes, did not know of its existence).

<sup>901</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 99.

<sup>902</sup> Statement of Chaplain, 10<sup>th</sup> Air Base Wing, Exhibit 30, at 3.

<sup>903</sup> Memorandum for Record, Interview with Officer from Counseling Center, Exhibit 27 (states that females stick with guys versus other girls who complain or report).

<sup>904</sup> Memorandum for Record, Group Interview with Female Officers, Exhibit 233, at 3; Memorandum for Record, Group Interview with Chaplains, Exhibit 220; see also Statement of Female Chaplain, 10<sup>th</sup> Air Base Wing, Exhibit 30 (believes that female cadets don't support those who report assault or harassment because female cadets think "you are making us look not the same" as the male cadets.)

<sup>905</sup> *Agenda for Change*, Exhibit 4.

<sup>906</sup> Statement of Lt Gen Dallager, Exhibit 71, at 10. Lieutenant General Hosmer shared this concern and even believed that there was a link between weakness of leadership and sexual assault, stating that poor leadership was a "core issue underlying many of these problems, sexual assault being one of them." He said, "I think deterioration in quality of command and confidence and trust in command will affect both the likelihood that something will happen and it affects the likelihood that, if it happens, you'll learn about it, and if it happens, the victim is likely to put her trust in the command system to do as good a job as can be done, of achieving justice and resolving that very difficult tension between justice and privacy." Statement of Lt Gen Hosmer, Exhibit 45, at 39-40.

it in part to lack of command experience. He stated that the majority of the AOCs under his command had never supervised more than ten people. Brigadier General Welsh felt this problem with lack of command experience also extended to the qualifications of the four Group AOCs, who would each supervise 1,100 personnel.<sup>907</sup> The immediate past Training Group commander, Col Slavec, noted that a junior captain who only has had one or two assignments is hampered in his or her ability to act as a role model for cadets.<sup>908</sup>

Senior leadership made efforts to correct the problem by requesting assistance from the Air Force Personnel Center (AFPC) on assignment of AOCs. Lieutenant General Dallager reports trying to work with AFPC, and being denied requests for specific, very high quality individuals.<sup>909</sup> Lieutenant General Dallager related that he presented the issue at CORONA<sup>910</sup> in the Fall of 2000, and again in 2002,<sup>911</sup> (apparently associated with describing the need for more flying rated AOCs) highlighting the fact that the quality of the AOCs as role model was related to the standard of the Academy graduates produced.<sup>912</sup> The Assistant Vice Chief of Staff of the Air Force shared his concern and supported the Academy's efforts for obtaining highly qualified AOCs as role models for cadets.<sup>913</sup> Prior to this, Brig Gen Welsh had been Commandant when Dean Wagie had started the AOCs' Master's Program, which involved officers undergoing a one year program prior to taking on duties as an AOC; the program was drastically reduced the very next year and this was a source of frustration to Brig Gen Welsh.<sup>914</sup> It was subsequently terminated, although the program will be reinstated under the *Agenda for Change*.<sup>915</sup>

Other than performance reports, which do not lend themselves to statistical analysis, there are few quality indicators available to accurately compare qualifications of AOCs. Regardless, we found some demographic data that shows AOCs are at or above the Air Force average in quality.<sup>916</sup>

While the Air Force average for officers with flight commander experience is forty-five percent, sixty-five percent of AOCs have flight commander experience.<sup>917</sup> While the Air Force average for rated officers (Pilot, Navigator or Air Battle Manager) is forty-three percent, fifty percent of AOCs assigned to the Academy are rated.<sup>918</sup> AOCs achieved distinguished graduate

<sup>907</sup> Statement of Brig Gen Welsh, Exhibit 64, at 11.

<sup>908</sup> Statement of Col Slavec, Exhibit 23, at 149-150.

<sup>909</sup> Statement of Lt Gen Dallager, Exhibit 71, at 19.

<sup>910</sup> CORONA refers to three-day conferences hosted by the Secretary and the Chief of Staff, generally held three times a year for the corporate Air Force leadership to discuss and decide on a wide variety of issues. Typical attendees include the Secretary, Under Secretary, and Assistant Secretaries of the Air Force, the General Counsel, all Air Force four-star generals, Major Command commanders, the Commander, Air National Guard, the Surgeon General, senior Air Force leaders from various disciplines, Washington area three-star generals, and the Superintendent of the Air Force Academy. Other senior Air Force commanders at the general officer level attend one of the three meetings each year in lieu of the Assistant Secretaries, Washington area three-stars, functional leaders and the Air Force Academy Superintendent.

<sup>911</sup> Statement of Lt Gen Dallager, Exhibit 71, at 17, 19, and 188-189; Statement of Brig Gen Gilbert, Exhibit 10, at 28-29; and Memorandum for Record, Interview with Lt Gen Wehrle, Exhibit 234.

<sup>912</sup> Statement of Lt Gen Dallager, Exhibit 71, at 17.

<sup>913</sup> Memorandum for Record, Interview with Lt Gen Wehrle, Exhibit 234.

<sup>914</sup> Statement of Brig Gen Welsh, Exhibit 64, at 13.

<sup>915</sup> *Agenda for Change*, Exhibit 4.

<sup>916</sup> In April 2003, there were forty-four AOCs assigned to the Academy. Thirty-six of the AOCs are squadron level (Captains and Majors) and eight are group level AOCs (Lieutenant Colonels). AOC Quality Indicators, HQ AFPC/DPS, Analysis Branch, Exhibit 235.

<sup>917</sup> *Id.* Based on same rank comparison.

<sup>918</sup> *Id.*

status from Squadron Officer School at 14% compared to the Air Force average of 8%.<sup>919</sup> AOCs receive Intermediate Service School candidacy at 30%, which is consistent with the Air Force average.<sup>920</sup> Lastly, AOCs are promoted below the zone (early) to Major at 1.94% compared to the Air Force average of 1.87%.<sup>921</sup>

While helpful in understanding the qualifications of serving AOCs, this information does not resolve the perceived need to be able to hand-select AOCs from the top echelons of officers, and for qualifications unique to the position.

## 2. Military Training Leaders

Senior leadership also expressed some concern with the qualifications of NCOs assigned as Military Training Leaders (MTLs). In general there was less concern with MTL qualifications than with AOCs, but there was still a sense of needing more qualified individuals for the positions.<sup>922</sup> Brigadier General Gilbert felt that some MTLs also lacked experience, and that the combination of an inexperienced AOC and an inexperienced MTL was problematic.<sup>923</sup> When the MTL program was originally implemented, hand-picked master sergeants filled the positions; now MTL assignments are given to technical sergeants and staff sergeants.<sup>924</sup> Consequently, the experience level of the MTLs now is less than it was originally, when the MTLs had a great deal of experience in discipline and supervision.<sup>925</sup> There is currently circulating a manning document that proposes considering senior airmen as MTLs, but the Academy has been able to negotiate substituting staff sergeants into senior airmen billets.<sup>926</sup>

## 3. AOC and MTL Training

AOCs go through a single two-week training program held the summer before the new AOCs assume their duties.<sup>927</sup> A typical AOC assignment is a two-year tour of duty,<sup>928</sup> and there is no refresher training after the initial course.<sup>929</sup> The training course includes briefings by support agencies, CASIE,<sup>930</sup> and the Inspector General's office.<sup>931</sup> The training course given to AOCs/MTLs simply familiarizes them with what resources are available. For example, no training

<sup>919</sup> *Id.*

<sup>920</sup> *Id.* (Percentage of recent AOCs (1998-2003) who met the Line of the Air Force promotion board in the primary zone for majors from 1995-2002 and received ISS Candidacy.) This includes members who had AOC experience from 1998-2003 but were not currently AOCs at the time of the board, along with members who met the board and later became AOCs and members who met the board while they were AOCs.

<sup>921</sup> *Id.* (Percentage of those who met the below the primary zone major's board from 1992-1998 and were promoted.) Below the zone promotions were eliminated after the 1998 major promotion board, so data was used for the years preceding this change.

<sup>922</sup> Statement of Lt Gen Dallager, Exhibit 71, at 7.

<sup>923</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 32.

<sup>924</sup> Statement of 34<sup>th</sup> Training Wing Superintendent, Exhibit 54, at 4.

<sup>925</sup> *Id.*

<sup>926</sup> *Id.*

<sup>927</sup> Statement of Group AOC, Exhibit 236, at 1.

<sup>928</sup> Statement of Squadron AOC, Exhibit 34.

<sup>929</sup> *Id.*

<sup>930</sup> See this Report, Section III.C., Prevention and Awareness Training.

<sup>931</sup> Though the IG brief was inadvertently omitted from the AOC/MTL training in the summer of 2002, a makeup session was later conducted: Statement of former Academy Inspector General, Exhibit 237.

is given to AOCs or MTLs on the concept of amnesty for victims of sexual offenses for infractions they themselves may have committed.<sup>932</sup>

Senior leadership took action to provide AOCs and MTLs further training in the summer of 2002. The Academy Character Enrichment Seminar (ACES) is a program developed by the HR Department and presented to First-Class cadets. In August 2002, at Gen Gilbert's direction, a special ACES for AOCs/MTLs was presented as a series of case studies for participants to talk through.<sup>933</sup> The case studies were based on actual scenarios faced by previous AOCs and MTLs and included, as a teaching aid, the action taken by the permanent party who faced the situation originally.<sup>934</sup> The scenarios and the actions taken by the AOCs/MTLs revealed a range of cadet misconduct, in some cases overlooked by the permanent party leadership.

The *Agenda for Change* implements changes to the selection process of AOCs, mandating enhancement to the AOC assignment process to ensure that selectees are superior officers. The *Agenda* requires all future AOCs to be majors or major-selects; to be chosen by central selection board established by the Air Force Personnel Center; to receive one year of graduate education resulting in a Master's degree in counseling or similar area prior to a two-year AOC assignment; and, once selected, to live on-base.<sup>935</sup>

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<sup>932</sup> Statement of Squadron AOC, Exhibit 127 (doesn't know what amnesty means); Statement of Group AOC, Exhibit 236 (if a victim approached him, he would call his boss to find out about amnesty).

<sup>933</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 22.

<sup>934</sup> Academy Character Enrichment Seminar for AOCs/MTLs, Exhibit 119.

<sup>935</sup> *Agenda for Change*, Exhibit 4.

## **V. Issues Related to the Academy's Response to Sexual Assault**

The Working Group identified a number of collateral issues associated with sexual assault at the Academy. They are discussed below, grouped within the following topic areas: Air Force Office of Special Investigations; 10<sup>th</sup> Security Forces Squadron; Role of Legal Offices Advising Commanders; Release of Information to Victims and Others; Victim Infractions Associated with Reporting of Sexual Assault; and Specific Cases Involving Administrative Responses.

### ***A. Air Force Office of Special Investigations***

The Air Force Office of Special Investigations (AFOSI) initiates and conducts independent investigations of serious crimes, including investigations of alleged sexual assault.<sup>936</sup> The AFOSI Detachment supporting the Academy is Detachment 808, which typically has seven to eight agents assigned.<sup>937</sup> AFOSI conducted fifty-two investigations of alleged sexual assault involving a cadet victim or cadet suspect relating to incidents alleged to have occurred between January 1, 1993, and December 31, 2002.<sup>938</sup>

#### **I. AFOSI's Role Under the Academy's Reporting Process**

USAF Instruction 51-201 states that anyone to whom a victim reveals that he or she has been assaulted should "encourage the victim to report the incident to law enforcement and/or command authorities as appropriate."<sup>939</sup> In addition, USAFA Instruction 51-201 advises individuals to whom a cadet reports a sexual assault to advise them of the following reasons to report the sexual assault to the AFOSI:

Reporting to AFOSI can benefit you directly, as well as, help to prevent others from being raped. Reporting the assault may be a way to regain your sense of personal power and control. It enables you to do something about the violent crime that was committed against you. Reporting also helps to ensure that you receive the most immediate and comprehensive professional assistance that is available. The AFOSI will assist you in getting specialized medical care, gathering and preserving evidence, and resolving concerns about your

<sup>936</sup> See Air Force Instruction 71-101V1, ¶ 1.1. This is done pursuant to the authority in Public Law 99-145. Among the criminal investigations the AFOSI will undertake are: aggravated assaults involving serious bodily injury, serious child abuse, all murders, voluntary and involuntary manslaughter, suicide and deaths by unknown causes except for vehicle accidents (except for those involving hit and run), extortion, kidnapping, attempted bombings, hijackings and terrorist acts. AFOSI also investigates sex offenses including allegations of rape, sodomy, carnal knowledge, child molestation or cases involving serious bodily harm. Air Force Instruction 71-101V1, Attachment 2B. Security Forces may investigate other crimes, consistent with laws and regulations, when the installation's AFOSI Commander and Chief of Security Forces agree. Air Force Instruction 71-101V1, ¶ 1.3.2. The AFOSI Detachment 808 Commander and 10<sup>th</sup> Security Forces Squadron Commander stated that AFOSI investigates cases of serious sex offenses such as sexual assaults and indecent assaults. See Memorandum for Record, follow-up interview with AFOSI Detachment Commander and 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 238.

<sup>937</sup> See Statement of AFOSI Detachment Commander, Exhibit 177 at 5.

<sup>938</sup> See this Report, Section VI.F., Review of Sexual Assault Cases.

<sup>939</sup> USAFA Instruction 51-201, ¶ 2.8, Exhibit 55. Paragraph 2.8.1.1. notes if the victim is willing, the individual to whom the cadet victim reported to, "should immediately notify [Air Force Office of Special Investigations]." *Id.* at ¶ 2.8.1.1. USAFA Instruction 51-201, Attachment 3, ¶ A.3.4. states, "Law enforcement investigations and the military justice system are designed to promote good order and discipline in the Armed Forces by assembling all the facts and circumstances surrounding an offense. In order to accomplish this goal, prompt cooperation with medial personnel, law enforcement officers and military authorities is extremely important." *Id.*

personal safety and security. Reporting and prosecuting the assailant are essential to the prevention of rape and the protection of other potential victims. If a rape is not reported, the assailant cannot be apprehended. Thus, the risk to others is increased.<sup>940</sup>

Although AFOSI is the primary agency for investigation of sexual assault allegations under the Academy's sexual assault program,<sup>941</sup> the victim may choose to report confidentially to CASIE or the Cadet Counseling Center and not invoke investigative or other official action.<sup>942</sup> AFOSI has recently had no relationship with CASIE or the Cadet Counseling Center except when AFOSI briefs CASIE volunteers at the beginning of each school year on the duties of AFOSI, and when CASIE or the Cadet Counseling Center contacts AFOSI to discuss a sexual assault "hypothetical" or to arrange for a victim to come forward to AFOSI to report the alleged assault.<sup>943</sup> In fact, in recent years, the current and former detachment commanders were unaware of any victim going to AFOSI without first going to CASIE or the Cadet Counseling Center.<sup>944</sup> The net result of the Academy-unique procedure is that AFOSI may not be aware of all sexual assaults and therefore may not have investigated allegations that ordinarily fall within its investigative purview.

Under the Academy's process, a sexual assault victim may decline to report altogether, or may come forward to AFOSI and discuss her case in the form of a hypothetical situation to ask questions about the process.<sup>945</sup> An AFOSI agent talks to the victim, who may be accompanied by a victim advocate.<sup>946</sup> In a "hypothetical," an AFOSI agent would talk about the process and would not investigate. However, if the victim alleged she had been raped, it would no longer be a discussion merely of the process and AFOSI would need to investigate the alleged assault.<sup>947</sup> In addition to the "hypothetical" cases AFOSI deals with, there are sexual assault victims who report directly to CASIE or the Cadet Counseling Center and never request a criminal investigation of the case.

This unique system of "nonreporting" at the Academy is different from standard procedures adhered to elsewhere in the Air Force.<sup>948</sup> The AFOSI is responsible for investigating "crimes

<sup>940</sup> USAFA Instruction 51-201, Attachment 7, ¶ A7.2., Exhibit 55.

<sup>941</sup> *Id.* at ¶ 2.7 and ¶ 2.8.2. If the victim is willing to make a formal complaint, the person the cadet victim reported to should immediately notify AFOSI. *Id.* at ¶ 2.8.1.1.

<sup>942</sup> *Id.* at ¶ 2.8.1.2.

<sup>943</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 4; See generally Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

<sup>944</sup> See Statement of former AFOSI Detachment Commander, Exhibit 176, at 2; See Statement of AFOSI Detachment Commander, Exhibit 177, at 3.

<sup>945</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; See Statement of AFOSI Detachment Commander, Exhibit 177, at 6; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

<sup>946</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, 0562-d, at 2. *Contra*: The Victim Advocate Coordinator stated, "[n]ormally [AF]OSI would rather not let them have anybody in with them [victim]. They feel that it is better for the investigation or questioning process . . . It's not that they say you can't go in, it's just that you kind of know that . . . they would rather us not go in." Statement of Victim Advocate Coordinator, Exhibit 50, at 36.

<sup>947</sup> See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239. The current Detachment Commander stated that he would discuss the process with a cadet but if she indicated she was a victim of an assault, he would be obliged to begin an investigation. See statement of former AFOSI Detachment Commander, Exhibit 176, at 2. The former AFOSI Detachment Commander stated that if the individual stated she had been raped, he "would have to go forward with [an investigation]."

<sup>948</sup> AFOSI is governed by Air Force Policy Directive 71-1, Air Force Instruction 71-101, Volume I; Air Force Office of Special Investigations Manual 71-122 and Air Force Office of Special Investigations Handbook 71-124.

against people," including cases of sexual assault.<sup>949</sup> Additionally, Air Force commanders are required to refer to AFOSI on all criminal matters and offenses for which the AFOSI is responsible.<sup>950</sup> AFOSI procedures require investigation of all allegations of rape.<sup>951</sup>

## 2. Perceptions of AFOSI.

A number of cadets and Counseling Center staff reported that cadets have a negative perception of AFOSI.<sup>952</sup> Interviews of CASIE volunteers trained by the Cadet Counseling Center indicated a tendency to convey negative perceptions of AFOSI to cadets.<sup>953</sup> The Cadet Counseling Center Victim Advocate Coordinator also believed the perception of the AFOSI among the cadets was bad,<sup>954</sup> although she indicated that she personally had a good working relationship with the former AFOSI detachment commander and two female agents.<sup>955</sup>

The current detachment commander was not aware of any negative perceptions of AFOSI and no complaints were reported to him.<sup>956</sup> The former detachment commander remembered a

<sup>949</sup> Air Force Mission Directive 39, ¶ 3.2. Rape is a crime against a person (female). UCMJ, Article 120. AFOSI is statutorily empowered to initiate and conduct criminal investigations. Public Law 99-145 § 1223 (99 Stat. 728). Once AFOSI has opened an investigation, only the Secretary of the Air Force (SECAF) through the Air Force Inspector General (SAF/IG) may direct the AFOSI to delay, suspend, or terminate an investigation. Air Force Policy Directive 71-1 ¶ 7.1 (July 1, 1999).

<sup>950</sup> Air Force Policy Directive 71-1, ¶ 7.5, does not define the term "Air Force Commander." However, Air Force Policy Directive 71-1 references DoD Instruction 5505.3, Initiation of Investigation by Military Criminal Investigative Organizations (July 11, 1986). DoD Instruction 5505.3 defines "commander" as "a commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a 'command'." DoD Instruction 5505.3, ¶ 3.1.

<sup>951</sup> Air Force Office of Special Investigations Manual 71-122, ¶ 2-3 and ¶ 2.3.3.1.2.

<sup>952</sup> Among the reported negatives are that the AFOSI has gone to an AOC and divulged information that was meant to be confidential. Statement of First-Class cadet, Exhibit 101, at 2. See also Statement of Second-Class cadet, Exhibit 109, at 4 (the "scary [AF]OSI people" are not going to be very discrete about the situation); Memorandum for Record, Interview with Victim Support Group, Exhibit 137 (the AFOSI questions the victims in a way that is not best suited for the victim and that AFOSI was "apathetic"); and Memorandum for Record, Interview with Second-Class cadet, Exhibit 240, at 2 (repeating a rumor that a rape kit "disappeared").

<sup>953</sup> See Statement of First-Class cadet, Exhibit 101, at 2. One cadet, who had served as a CASIE volunteer for about three years, stated that he tells victims the investigation is an intrusive process and "OSI doesn't work for you. They will do what's in the best interest of Air Force." In addition, the Victim Advocate Coordinator stated, "OSI is not there to nurture you, it's not there to be your friend. They're going to ask you questions in difficult ways to make sure they're getting the right answers." See Statement of Victim Advocate Coordinator, Exhibit 50, at 32-33.

<sup>954</sup> Statement of Victim Advocate Coordinator, Exhibit 50 at 33. "I said, 'There's not going to be hot lights, they're not going to whip you, they can't hit you' because that's the perception that a lot of victims have. They're scared to death." See Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171. See also, Exhibit 275 (cadet reports negative perception of AFOSI).

<sup>955</sup> Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; See Statement of Victim Advocate Coordinator, Exhibit 50, at 103. She recalled one negative personal experience with the AFOSI. The young lady arrived with her squadron commander who was also female and indicated that she did not want to report the incident to AFOSI. The Victim Advocate Coordinator tried to get the victim to report the assault but the victim was not interested. The victim did allow the Victim Advocate Coordinator to take pictures of the bruises. The Victim Advocate Coordinator used the cadet clinic camera and took pictures of the bruises. She did not take a picture of the victim's face and did not have a ruler to use in the pictures. She took the film out of the camera and kept it with her at all times. She took the film home with her and brought it back to work with her. A couple of weeks later the victim reported the assault to AFOSI. According to the Victim Advocate Coordinator, AFOSI members were upset when they learned she had taken pictures. The Victim Advocate Coordinator handed the film over to AFOSI and they developed it. See Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 241, at 1.

<sup>956</sup> See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2. See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 3.

negative perception when he went to brief the CASIE volunteers at the beginning of the academic year a few years ago, but he believed it had been cleared up by the end of the discussion.<sup>957</sup>

Interviews revealed that either consciously or not, some volunteers and/or the victim advocates may have discouraged cadet victims from reporting such incidents to law enforcement authorities.<sup>958</sup> An interview with a volunteer who briefs cadets and possible victims (a member of CASIE), indicated that it was possible that as a CASIE volunteer there might be at least the suggestion to cadet victims that reporting the assault to law enforcement officials would not necessarily be a pleasant experience. Although this particular CASIE volunteer never indicated that she made the following statements to any cadet victims she interacted with, she did refer to the AFOSI as the "scary AFOSI people." In addition, when discussing the pros of the Academy's CASIE reporting system versus the traditional Air Force reporting systems she stated:

If I had to go and talk to the scary [AF]OSI people and they are not going to be very discreet about the situation then things will not go very well. That prospect is very scary, because you already had this traumatic thing happen to you and now you know everybody else is finding about it. This is called re-victimization; it's something that any victim of sexual assault can go through.<sup>959</sup>

In addition to some of the CASIE volunteers, the Victim Advocate Coordinator may have inadvertently discouraged cadet victims from reporting their sexual assault to law enforcement officials by the manner in which she informs cadet victims of their reporting options. For example, the Victim Advocate Coordinator advises cadet victims that they can "either continue with counseling and not tell anybody about the sexual assault or there's the avenue where you can tell somebody about the sexual assault through legal channels (i.e., going to law enforcement, going to AFOSI, and then your AOC finding out, or if you wanted to go to a chaplain or whatever)."<sup>960</sup> In addition, the Victim Advocate Coordinator advises cadet victims that "OSI is not the most wonderful experience they will ever have in their whole entire life, but that they view things different than I do."<sup>961</sup>

<sup>957</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 4.

<sup>958</sup> Specifically, one CASIE volunteer stated that when he advises cadet victims he tells them the investigation is an intrusive process. He explains the legal process and tell them they will lose some of their confidentiality and that the AFOSI notifies the officer chain of command, not the cadet chain of command, but all they tell the command is that the victim is involved in an investigation, but not the nature of the investigation. Statement of Male First-Class cadet/CASIE volunteer, Exhibit 101, at 2. This CASIE volunteer tells the victim that AFOSI doesn't work for the victim and they will do what's best interest of Air Force. *Id.* In addition, this CASIE volunteer provides the cadet victim with insight as to the judicial aspect of reporting specifically, with regard to Article 32 hearings. The CASIE volunteer tells cadet victims that she will have to testify and that not all the evidence of the assault is required to be submitted at the Article 32. *Id.* This particular CASIE volunteer does suggest to the victim that a rape kit can be saved at Security Forces which can allow the victim time to think about the investigation. *Id.*

<sup>959</sup> Statement of Female Second-Class cadet and CASIE Volunteer, Exhibit 109, at 4.

<sup>960</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 23.

<sup>961</sup> *Id.* at 32. The Victim Advocate Coordinator attempts to explain to cadet victims the difference in her way of interacting with them as opposed to how the AFOSI may interact with them. For example, she stated that when dealing with a cadet victim she tells the individual, "'I may ask you something very nicely. I am touching your shoulder . . . I'm nurturing.' I say, 'OSI is not there to nurture you, it is not there to be your friend. They're going to ask you questions in different ways to make sure they're getting the right answers. They need to know every little itty-bitsy part of it because they're trying to create a story.' I said, 'There's not going to be hot lights, they're not going to whip you, they can't hit you' because that's a perception a lot of victims have. They're scared to death.'" *Id.* The Victim Advocate Coordinator may be presenting a more ominous picture of AFOSI than she realizes. See Memorandum for Record, Meeting with Former Academy Cadet About Sexual Assault, Exhibit 275, at 2, in which a cadet victim stated that

Finally, some witnesses expressed a perception that AFOSI would provide information obtained during its investigation to assist in cadet discipline against the victim or witnesses to an alleged act. One cadet interviewed expressed strong feelings toward AFOSI and believed that the matters presented to AFOSI were not confidential. She believed that when AFOSI learned of cadet misconduct during interviews with witnesses, AFOSI reported the misconduct to Academy leadership, and in turn, the cadet received a disciplinary "hit." Her belief was based on the experience of her roommate who had reported an incident.<sup>962</sup> The Cadet Counseling Center's Victim Advocate Coordinator stated there were instances in which the AFOSI told cadets they were not interested in the ancillary misconduct so the witnesses spoke freely. The information was recorded in the AFOSI Report of Investigation (Report). The witnesses were subsequently punished for the misconduct.<sup>963</sup>

Both the current and former detachment commanders indicated that AFOSI is not interested in cadet misconduct that is not part of a criminal investigation they undertake.<sup>964</sup> However, admitted misconduct will be put in the AFOSI report, as part of the investigation, if relevant.<sup>965</sup> AFOSI does not separately forward ancillary misconduct to Academy leadership.<sup>966</sup> An expression of lack of interest in ancillary misconduct, without explanation that it might nonetheless be referenced in the report going to the commander, could account for cadets or others perceiving that they had been misled.

### 3. Experiences Related by Victims

Several complaints have surfaced concerning the manner in which the AFOSI treated cadet sexual assault victims. These complaints have come from an active duty officer, the Victim Advocate Coordinator, a cadet, and a private, non-profit community organization.<sup>967</sup> As specific

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"cadets are counseled that OSI is a 'monster'..." AFOSI Manual 71-122, ¶ 2.3.3.2.3 specifically instructs agents to "[e]xplain to the victim that completing certain investigative steps (i.e., collecting and preserving evidence, obtaining basic information) is important to a successful investigation and maximizes the chances of apprehending and successfully prosecuting the perpetrator."

<sup>962</sup> See Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 37, at 1.

<sup>963</sup> See Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171. The witness did not give specific cases to support this opinion.

<sup>964</sup> The Working Group staff team did not speak to specific AFOSI case agents, as the Air Force Inspector General is conducting a review of all AFOSI investigation reports for cadet cases between 1993 and 2002, and specific allegations concerning AFOSI agents.

<sup>965</sup> See Statement of AFOSI Detachment Commander, Exhibit 177 at 3.

<sup>966</sup> *Id.*

<sup>967</sup> The complaints made against AFOSI include allegations that AFOSI was immediately confrontational, accused a victim of lying, insinuated that a victim dreamed the assault, told a victim that going to court would hurt her as much as it would the alleged assailant, and that an AFOSI agent made a comment to the TESSA representative to the effect that there were no sexual assaults. The TESSA representative stated that she had been called to the Academy to respond to an incident of domestic violence as a victim advocate. While handling that case, she made a comment to an AFOSI agent about sexual assaults on cadets. She stated that the agent replied, "There are no sexual assaults. They can't make it in a man's world so they cry rape to make up for their own deficiencies." See Memorandum for Record, Interview with TESSA Personnel, Exhibit 243 at 2; Statement of Captain, Faculty Member, Exhibit 26, at 2; Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 244 (assault occurred in June 2001 and reported to AFOSI two days later); Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Statement of Victim Advocate Coordinator, Exhibit 50, at 36-37. One cadet stated she felt her meeting with the AFOSI was an interrogation rather than a fact-finding interview. See Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (reported incident to AFOSI in October 2001). According to the AFOSI Working Group member, AFOSI investigates allegations of criminal activity in order to impartially determine the facts and circumstances of an allegation brought to

concerns about AFOSI are being addressed by the Air Force Inspector General, we cannot comment on the validity of these specific allegations but rather address them in a general context.

Interviews with the current and immediate past detachment commanders indicate that neither commander personally received any complaints about AFOSI agents handling sexual assault cases nor were they aware of any agents acting as described.<sup>968</sup> The former detachment commander had heard second hand of a complaint raised by the mother of one of the alleged victims concerning what she considered to be rude treatment of herself.<sup>969</sup> The former detachment commander spoke personally to the mother and asked if she had concerns and the mother denied any problems. He is aware, however, that she made complaints to others. In a separate matter, Brig Gen Welsh, a former Commandant, notified the former detachment commander that a father had complained about the AFOSI not providing the father with information.<sup>970</sup> The former detachment commander stated he wanted to talk to the father about the case, but the daughter was of age and refused to give consent for the AFOSI to talk to the father about the facts of the case.<sup>971</sup>

The former detachment commander related that for "hypothetical" cases, he always met personally with the victim. If the victim was willing to come forward, she usually came with a victim advocate. If a victim advocate attended, that person remained in the room. He let the victim ask questions in a hypothetical context. However, if the victim said that she had been "raped," the case became a criminal investigation rather than a "hypothetical."<sup>972</sup> He personally guaranteed the victim that she would be treated with dignity and respect. He always gave the victim his business card and his home and office phone numbers so she could contact him if she felt she was not being treated correctly. They then talked about the case and discussed all aspects of the case from an objective standpoint. He attempted to dissuade fears and made sure she understood all of the process and what reporting the sexual assault encompassed. He touched on the investigative aspects and on the legal aspects. He told the victim that AFOSI did not decide what to do with the case and that it would be forwarded to the 10th Air Base Wing Legal Office after AFOSI collected the facts. He did not comment on the legal process and stated he always stressed respect and dignity for each victim.<sup>973</sup>

According to AFOSI instructions, agents are trained to use extreme care in sexual assault cases to ensure investigative procedures do not cause or aggravate any emotional harm to the

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the attention of a detachment. AFOSI also investigates allegations of unprofessional agent conduct. Relative to the statement attributed by the TESSA representative to an unnamed AFOSI agent, AFOSI reviewed all information pertaining to investigations of its personnel and had no record of a complaint regarding improper conduct or agent insensitivity during a sexual assault investigation at the Academy. Any such complaints would be fully investigated by AFOSI/IG in accordance with standard AFOSI procedures. This matter has been referred to the Air Force Inspector General. Working Group (SAF/IG) comment.

<sup>968</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176 at 3; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, 0562-d, at 2.

<sup>969</sup> See Memorandum for Record, Follow-up Interview with Former AFOSI Detachment Commander, Exhibit 245.

<sup>970</sup> See Statement of Brig Gen Welsh, Exhibit 64, at 70-71.

<sup>971</sup> See Memorandum for Record, Follow-up Interview with Former AFOSI Detachment Commander, Exhibit 245.

<sup>972</sup> See Statement of former AFOSI Detachment Commander, Exhibit 176, at 2. "I would let the victim ask questions in a hypothetical case, however if the victim ever said 'I was raped' then I would have to go forward with that."

Discussion with current Detachment Commander indicated that AFOSI will discuss the investigative process with cadets but if the cadet indicates that a sexual assault or rape occurred, the victim will be asked if she is reporting a crime. If she states it is a hypothetical situation, a discussion of the process can continue. However, if a crime is reported, AFOSI will begin an investigation. See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

<sup>973</sup> See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2.

victim.<sup>974</sup> If complaints were made to AFOSI about an agent's behavior, the complaint would be reviewed by the detachment commander who would meet with the agent. The AFOSI Inspector General can also investigate complaints of AFOSI misconduct.<sup>975</sup> In this situation, the AFOSI Detachment Commander could not review any actions because he was unaware of any complaints about AFOSI.

#### 4. Compliance with AFOSI procedures

Initial analysis of AFOSI-investigated allegations of sexual assault over the last ten years reveals no significant anomalies in case investigations, with the possible exception of one case in which AFOSI did not open a full-fledged investigation, relying instead upon the verbal legal opinion of the 10<sup>th</sup> Air Base Wing Staff Judge Advocate that "on its face" the allegation did not amount to rape.<sup>976</sup> In that case, the victim was compelled by the Academy Superintendent (override) to report the incident, which allegedly occurred two years earlier. AFOSI took her written statement.<sup>977</sup> There was no physical evidence to collect due to the length of time that passed since the incident. AFOSI contacted the 10<sup>th</sup> Air Base Wing Staff Judge Advocate and requested a review of the victim's statement to determine the viability of a conviction before they opened the investigation on the case.<sup>978</sup> The 10<sup>th</sup> Air Base Wing Staff Judge Advocate reviewed the victim's statement and opined that the allegation, if true, did not establish a prima facie case of rape.<sup>979</sup> It was implied that an investigation would not be opened. AFOSI documented the circumstances in the event more evidence surfaced, but no investigation was opened.<sup>980</sup> The detachment commander said he did not open an investigation because of the opinion of the 10<sup>th</sup> Air Base Wing Staff Judge Advocate that the facts failed to establish a prima facie case of rape. He also said he did not contact a Forensic Science Consultant because he was a former consultant himself.<sup>981</sup> According to AFOSI instructions, AFOSI is required to conduct an investigation on every *allegation* of rape.<sup>982</sup> Specifically, AFOSI should "investigate all rape allegations to logical conclusion" and should "not report them as a zero or information file."<sup>983</sup> AFOSI Headquarters has interpreted this instruction to mean that opening an investigation on a clear allegation of rape is not discretionary.<sup>984</sup> The Inspector General has directed that AFOSI further clarify policy regarding this issue in their directives.<sup>985</sup> A review of the victim's statement, by the lawyers on the Working Group, indicated

<sup>974</sup> Air Force Office of Special Investigations Manual 71-122, ¶ 2.3.3.

<sup>975</sup> Air Force Office of Special Investigations Instruction 71-138, ¶ 1. See also Air Force Instruction 90-301, Inspector General Complaints, ¶ 1.53.5 and Table 2.7, Rule 5.

<sup>976</sup> See Statement of AFOSI Detachment Commander, Exhibit 177, at 3-4; see Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 1-2; see Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5.

<sup>977</sup> AF Form 1168, Witness Statement of Female Cadet, Sept. 19, 2002, Exhibit 217.

<sup>978</sup> See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5, see also Statement of AFOSI Detachment Commander, Exhibit 177, at 4. The AFOSI Detachment Commander stated "[W]e took a statement and went to coordinate with the legal office. Legal said there was no crime here based on the information she provided. We documented the information but there wasn't a full investigation." Exhibit 177, at 4.

<sup>979</sup> See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 5.

<sup>980</sup> See Statement of AFOSI Detachment Commander, Exhibit 177, at 4. He stated, "On [the cadet] we got information, coordinated with legal and then documented so if any other info came forward in the future we would have that to look back on as evidence." See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2.

<sup>981</sup> See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2.

<sup>982</sup> Air Force Office of Special Investigations Manual 71-122, ¶ 2-3.3 and the subsequent paragraphs provide guidance.

<sup>983</sup> Air Force Office of Special Investigations Manual 71-122, ¶ 2.3.3.1.2.

<sup>984</sup> Working Group Member (AFOSI) comment.

<sup>985</sup> Working Group Member (Inspector General) comment.

that an investigation should be accomplished. The General Counsel recommended and the Secretary of the Air Force directed AFOSI to open this investigation to fully document all issues in this matter. The investigation is pending.

### ***B. 10<sup>th</sup> Security Forces Squadron***

In the Air Force, the Security Force Squadron has both installation security and law enforcement responsibilities,<sup>986</sup> but does not ordinarily investigate sexual assault cases because those investigations are performed by AFOSI.<sup>987</sup> Nonetheless, Security Forces may be involved in the collection and maintenance of evidence obtained in sexual assault cases.<sup>988</sup>

#### **1. Limited Involvement in Sexual Assault Cases.**

We could not identify any instances in which a cadet alleging sexual assault has initially come forward to the 10<sup>th</sup> Security Forces Squadron. The Academy has its own instruction directing that 10th Security Forces Squadron investigators or AFOSI will be contacted to secure evidence in sexual assault cases.<sup>989</sup> Security Forces investigators have the authority to maintain this evidence without a requirement to disclose the identity of the victim to other investigative agencies until such time as the victim consents or the Superintendent directs an investigation.<sup>990</sup> Security Forces will secure any recent potential crime scene, including sexual assault crime scenes.<sup>991</sup> However, the 10<sup>th</sup>

<sup>986</sup> Air Force Instruction 31-201, ¶ 2.2. Security Forces members investigate all crimes, offenses or incidents falling within their investigative jurisdiction as set forth in Air Force Instruction 31-206, Attachment 2 and Air Force Instruction 71-101, Volume 1, Attachment 2. Air Force Instruction 31-206, ¶ 2.1. Among the crimes falling within their investigative jurisdiction are: simple assaults, child physical abuse or neglect not involving serious bodily harm and not involving sexual abuse, computer crimes such as misdemeanor offenses, adult pornography or unauthorized personal use. They also investigate all on-base vehicular deaths (with the exception of hit and runs), drug abuse involving use or possession, larceny of government and personal property in lesser amounts, and sex offenses such as indecent exposure, sexual misconduct and voyeurism. Air Force Instruction 31-206, Attachment 2 and Air Force Instruction 71-101, Volume 1, Attachment 2. When authorized, Security Forces provide investigative assistance to AFOSI. The AFOSI detachment commander or special agent in charge and CSF (Chief of Security Forces) jointly make determinations of need. Air Force Instruction 31-206, ¶ 2.1.1. The AFOSI Detachment 8 Commander and the 10<sup>th</sup> Security Forces Squadron Commander stated that AFOSI investigates cases of serious sex offenses such as sexual assaults and indecent assaults. See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander and 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 238.

<sup>987</sup> Air Force Policy Directive 31-2, Law Enforcement (May 6, 1994) is the Air Force Directive governing Security Forces personnel. Air Force Instruction Air Force 31-206, Security Forces Investigations Program (August 1, 2001) implements Air Force Policy Directive 31-2 and establishes responsibilities and guidance on Security Forces investigation of criminal matters. Air Force Instruction 31-206, Attachment 2, Rule 28, delineates responsibilities for investigating sex offenses. AFOSI is given responsibility to investigate rape, sodomy, cases involving serious bodily harm, carnal knowledge and sexual misconduct by authority figures. The Security Forces are to investigate sex crimes involving indecent exposure, sexual misconduct and voyeurism. However, sexual misconduct for purposes of Air Force Instruction 31-206 are those sexual acts in violation of Chapter 7 of Title 10, U.S.C., occurring between consenting adults, in private, whether on or off a military installation. Air Force Instruction 31-206, Attachment 1. These types of offenses are only investigated at the request of the subject's commander. However, the 10<sup>th</sup> Security Forces Squadron is currently investigating an alleged sexual assault in which the cadet victim was grabbed on the buttocks through her clothing. AFOSI and the 10<sup>th</sup> Air Base Wing Legal Office are aware that the 10<sup>th</sup> Security Forces Squadron is investigating this case. Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 5; Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

<sup>988</sup> For a discussion of Security Forces involvement in cadet security, see this Report, Section IV.E., Dormitory Environment.

<sup>989</sup> USAFA Instruction 51-201, Exhibit 55, at Attachment 5, ¶ A5.5.

<sup>990</sup> *Id.* at ¶ 2.3.1.1.

<sup>991</sup> *Id.* at ¶ 2.8.1.1.

Security Forces Squadron has not provided initial response to a sexual assault crime scene during the tenure of its current commander from June 2002 to the present.<sup>992</sup> While the 10<sup>th</sup> Security Forces Squadron is not involved in the investigation of such cases, these as well as other cases of cadet misconduct may be brought to their attention and discussed at the Commandant's "Cops and Robbers" meeting held every other week.<sup>993</sup>

## 2. Collection and Maintenance of Rape Protocols and Evidence.

Security Forces is involved in the collection and maintenance of evidence obtained in some sexual assault cases. If a cadet victim reports a sexual assault to CASIE or the Cadet Counseling Center, the victim is encouraged to complete a rape protocol kit for use in a criminal investigation, regardless of whether she wants to initiate a criminal investigation at that time.<sup>994</sup> In accordance with a Memorandum of Agreement between the Academy and Memorial Hospital<sup>995</sup> in Colorado Springs, Colorado, Memorial Hospital performs rape protocols for cadet victims.<sup>996</sup> However, Memorial Hospital requires authorization by a law enforcement officer before conducting the examination.<sup>997</sup> The 10<sup>th</sup> Security Forces Squadron is typically contacted by CASIE or a victim advocate and notified to go to Memorial Hospital to request a rape protocol kit. The 10<sup>th</sup> Security Forces Squadron investigator shows his or her law enforcement credentials to the Sexual Assault Nurse Examiner (SANE) prior to initiation of an examination of a cadet victim.<sup>998</sup> When the examination is complete, the 10<sup>th</sup> Security Forces Squadron investigators receive the rape protocol kit from the SANE nurse<sup>999</sup> and provide security for the evidence.<sup>1000</sup>

According to the AFOSI Chief Forensic Consultant, storing biological evidence (whether it is blood, urine, or vaginal lavages) at the 10<sup>th</sup> Security Forces Squadron until such time as a victim decides to report an alleged sexual assault to AFOSI raises concerns. Biological evidence degrades over time. If alcohol or "date rape" drugs are a factor in the sexual assault, the timely collection of a blood sample and its submission for laboratory analysis is critical.<sup>1001</sup>

Performing a physical examination is merely one step in a sexual assault investigation. Other types of physical evidence are also material and can and should be gathered at the crime scene. Examination of clothing and the accurate photographic documentation of a victim's injuries may be part of the particular rape protocol. Also, in contrast to the victim advocate's service, which

<sup>992</sup> See statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 1.

<sup>993</sup> See Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 2; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2; Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 3; Statement of 10<sup>th</sup> Air Base Wing Legal Office former Chief of Justice, Exhibit 156, at 1; and Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1.

<sup>994</sup> See Statement of Victim Advocate Coordinator, Exhibit 50, at 23-24; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246. See also Statement of CASIE Program Manager, Exhibit 99. She stated that the rape kit is explained to the victim and the individual is told how to get one done without a formal investigation. The victim is also told there is a seventy-two hour limit on recovering evidence. *Id.* at 3.

<sup>995</sup> Memorandum of Agreement Between the United States Air Force Academy and Memorial Hospital, Exhibit 404

<sup>996</sup> See Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 4; see also Statement of Victim Advocate Coordinator, Exhibit 50, at 4, 40 and 78.

<sup>997</sup> See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 1.

<sup>998</sup> See *id.* and Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 1.

<sup>999</sup> See Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 1; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 1.

<sup>1000</sup> See Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 1; See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2.

<sup>1001</sup> Working Group member (AFOSI) comment.

focuses only on the collection of evidence from the victim, there may be the need for timely collection of evidence from the alleged perpetrator and others.<sup>1002</sup>

There may be an adverse effect from the lack of interaction between the SANE nurse and a law enforcement investigator. Information disclosed by the victim to the nurse during the course of the medical examination, which could provide investigators local investigative leads or corroborate the victim's allegation, may not be shared with law enforcement in all cases.<sup>1003</sup>

If the cadet victim requests a criminal investigation, the rape kit is released to AFOSI for safeguarding in their evidence room.<sup>1004</sup> If the victim does not want to initiate an official investigation at that time, 10<sup>th</sup> Security Forces Squadron investigators log in and maintain the rape kit in an evidence room.<sup>1005</sup> Security Forces maintain rape kits until authorized to dispose of them by 10<sup>th</sup> Air Base Wing Legal Office.<sup>1006</sup>

### 3. Allegations of Lost or Destroyed Rape Kits.

The Working Group identified two victims who alleged mishandling of a rape kit by AFOSI: one victim who claimed that her rape kit was lost and another victim who alleged that her rape kit was destroyed. In the first situation, the victim alleged that she was assaulted in 2002. She traveled to Memorial Hospital and obtained a rape kit. AFOSI maintained control of the rape kit because it was involved in the criminal investigation. The victim claims she contacted AFOSI for her rape kit; but, the kit was not available because it had been sent to a lab for analysis.<sup>1007</sup> The rape kit is currently in the custody of the AFOSI and is stored in their evidence room while the investigation continues.<sup>1008</sup>

In the second situation, the victim alleged that she was assaulted in 2001. AFOSI had custody of the rape kit because the case was under criminal investigation. In approximately mid-September to October 2002, the victim sent an e-mail message to an Air Force attorney who was involved in her case and requested a copy of the records relating to the results of her rape kit.<sup>1009</sup> The attorney said she had directed the rape kit be destroyed in accordance with usual procedures because the case was not going to court-martial and to protect her privacy. The attorney told the cadet she could get a copy of the records from Memorial Hospital and offered to assist her. The

<sup>1002</sup> *Id.*

<sup>1003</sup> *Id.*

<sup>1004</sup> See Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 2; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2; See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246.

<sup>1005</sup> See Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 1; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246 at 2.

<sup>1006</sup> Air Force Instruction 31-206, ¶ 2.6.1.9. (obtain written approval from the Staff Judge Advocate before disposing of the evidence).

<sup>1007</sup> See Memo for SAF/IGX, AFOSI Detachment 808 Evidence Inspection Results, Exhibit 247; Statement of AFOSI Detachment Commander, Exhibit 177 at 4; Statement of Academy Legal Office, Chief of Justice, Exhibit 91 at 5.

<sup>1008</sup> See Memorandum, Re: Evidence Inspection Results, Exhibit 247; Statement of AFOSI Detachment Commander, Exhibit 177, at 4.

<sup>1009</sup> See Memo for Academy Legal Office Staff Judge Advocate, February 14, 2003, Exhibit 248. The attorney remembers the cadet asked for the rape kit "approximately 1 to 2 months before I PCS'd [Permanent Change of Station] from Schriever, on 17 November 02." In a later telephone interview, the assistant trial counsel in the case, clarified that it was the assistant trial counsel's understanding that the victim was asking for a copy of the records completed by Memorial Hospital that related to the examination performed on the cadet after the alleged rape, not the actual items included in the kit itself. See Memorandum for Record, Telephonic Interview with Judge Advocate, Exhibit 249.

offer was declined.<sup>1010</sup> The rape kit was destroyed on June 3, 2002, after authorization from the 10<sup>th</sup> Air Base Wing Legal Office in accordance with routine AFOSI procedures.<sup>1011</sup>

The 10<sup>th</sup> Security Forces Squadron currently maintains two rape kits, one dated April 10, 2000, and the other dated May 24, 2002.<sup>1012</sup> In January 2001, the 10<sup>th</sup> Security Forces Squadron released a rape kit to AFOSI, the only rape kit annotated on the evidence log as being released.<sup>1013</sup> There are no indications of rape kits having been lost or destroyed by the 10<sup>th</sup> Security Forces Squadron during the tenure of the evidence custodian, a period dating back to October 2000.<sup>1014</sup>

### *C. Legal Offices Advising Commanders*<sup>1015</sup>

Academy leadership is advised by two legal offices, the 10<sup>th</sup> Air Base Wing Legal Office and the Academy Legal Office. These two offices advise on administrative and prosecutorial decisions pertaining to cadets, including decisions relating to sexual assault allegations. There is no formal delineation of responsibilities between the two legal offices<sup>1016</sup> and both become involved in cadet discipline actions.

At the Training Wing level, Brig Gen Gilbert, the Commandant from 2001 to 2003, considered the 10<sup>th</sup> Air Base Wing Legal Office to be his legal advisor,<sup>1017</sup> although Academy Legal Office lawyers also participated in his periodic meetings to discuss potential discipline cases.<sup>1018</sup>

<sup>1010</sup> *Id.*

<sup>1011</sup> Air Force Office of Special Investigations Manual 71-118V4, ¶ 5.15; see Memorandum, Re: Evidence Inspection Results, Exhibit 247; AFOSI Form 158, Evidence Disposition, U.S. v. Rodriguez, Exhibit 250.

<sup>1012</sup> See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2; Statement of 10<sup>th</sup> Security Forces Squadron Commander, Exhibit 178, at 2. The 10<sup>th</sup> Air Base Wing Legal Office authorized destruction of the April 10, 2000, rape kit in a disposition letter dated August 20, 2002, as that kit was no longer required for evidentiary purposes. See Quarterly Evidence Disposition Letter, August 20, 2002, Exhibit 251. However, the rape kit will not be destroyed until investigations regarding sexual assaults at the Academy are finished. Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2.

<sup>1013</sup> *Id.*

<sup>1014</sup> *Id.*

<sup>1015</sup> There is one General Court-Martial Convening Authority, the United States Air Force Academy Superintendent, as well as three Special Court-Martial Convening Authorities, the Dean of Faculty, the 34<sup>th</sup> Training Wing Commandant and the 10<sup>th</sup> Air Base Wing Commander at the Academy. Department of the Air Force, Special Order GA-001, Court Martial Convening Authorities, Exhibit 8. There are two separate legal offices, the Academy Legal Office and the 10<sup>th</sup> Air Base Wing Legal Office, at the Academy aside from the Department of Law, which falls under the Dean of Faculty and does not act as a legal advisor for commanders. See Statement of Brig Gen Wagie, Exhibit 198, at 31-32. The Academy exercises concurrent jurisdiction with the State of Colorado over the grounds of the Academy. In May 1995, the Colorado legislature passed a bill, which was signed into law by the governor, which offered concurrent jurisdiction of the lands dedicated to the Academy. Staff Summary Sheet, Re: Academy Legislative Jurisdiction, Exhibit 252. This matter was presented to the Secretary of the Air Force with the recommendation that she accept concurrent legislative jurisdiction over the Academy. The Staff Summary Sheet indicates the Secretary of the Air Force signed the recommendation accepting concurrent jurisdiction. *Id.*

<sup>1016</sup> See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1, 3, Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 8.

<sup>1017</sup> See Statement of Brig Gen Gilbert, Exhibit 10, at 61-62; Statement of Brig Gen Welsh, Exhibit 64, at 43. However, Brig Gen Welsh stated he also used the Academy Legal Office for obtaining second opinions. *Id.* at 68. But see Statement of Maj Gen Lorenz who indicated he considered the Academy Legal Office to be his legal advisor rather than the 10<sup>th</sup> Air Base Wing Legal Office. *Id.* at 59. However, he would also receive advice from the 10<sup>th</sup> Air Base Wing Legal Office. *Id.*

<sup>1018</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 61-63. See statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 5; Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 1; Statement of Academy

Brigadier General Gilbert did not request the Academy Legal Office to attend his meetings.<sup>1019</sup> While the 10<sup>th</sup> Air Base Wing Legal Office is responsible for nonjudicial punishment and court-martial actions, Academy Legal Office representatives frequently advise the Training Group on whether cadet discipline cases warrant consideration of nonjudicial punishment, court-martial, disenrollment or other significant action.<sup>1020</sup> However, Academy Legal Office lawyers may not know of the case until a disenrollment action is initiated.<sup>1021</sup> Neither legal office is involved in amnesty decisions,<sup>1022</sup> although Col Eskridge, the Vice Commandant from December 2002 to March 2003, said he would call Academy Legal Office lawyers for advice.<sup>1023</sup>

There is interaction between the Academy Legal Office and 10<sup>th</sup> Air Base Wing Legal Office. The 10<sup>th</sup> Air Base Wing Staff Judge Advocate views the Academy Legal Office as a MAJCOM (superior command legal office) and keeps them apprised of significant actions involving the 10<sup>th</sup> Air Base Wing Legal Office.<sup>1024</sup> However, when it comes to cadet disciplinary matters, neither office is necessarily involved in the day-to-day cadet disciplinary system.<sup>1025</sup> The 10<sup>th</sup> Air Base Wing Legal Office handles all courts-martial and Article 15 actions for cadets and other Air Force personnel at the Academy, while the Academy Legal Office handles cadet discipline and disenrollment actions. The 10<sup>th</sup> Air Base Wing Legal Office generally is unaware of cases being handled in the cadet disciplinary system because their responsibilities begin when a decision is made that a cadet will face UCMJ action.<sup>1026</sup> The 10<sup>th</sup> Air Base Wing Legal Office was not aware of information on many of the cadet discipline cases, as opposed to UCMJ cases, discussed by the Academy Legal Office representative at the Commandant's "Cops and Robbers" meeting because they were handled within the cadet disciplinary system.<sup>1027</sup>

While the Academy Legal Office works the cadet disenrollment cases and has a legal advisor on the Military Review Committee who considers cadet misconduct cases, they are not necessarily involved in day-to-day cadet discipline decisions. Cases that are not perceived as sufficiently serious to warrant consideration of disenrollment do not rise to the Academy Legal Office level.<sup>1028</sup> The first time the Academy Legal Office may learn of cadet misconduct is often

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Legal Office Staff Judge Advocate, Exhibit 162, at 1; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

<sup>1019</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 61. In discussing the fact that there are two legal offices at the Academy, Brig Gen Gilbert stated, "It would sure make life easier if there was one legal office on base." *Id.*

<sup>1020</sup> Statement of Col Slavec, Exhibit 23, at 119-123. See Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 2, 8, 9.

<sup>1021</sup> Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3. See Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

<sup>1022</sup> Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 11.

<sup>1023</sup> Statement of Col Eskridge, Exhibit 124, at 39-40. Colonel Eskridge became the Vice Commandant on December 23, 2002. Amnesty, in this context, involves cadets receiving a promise that no discipline for cadet infractions will flow from self reports of sexual assault. For additional information, see this Report, Section III.E., Amnesty for Infractions.

<sup>1024</sup> Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3. See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 3.

<sup>1025</sup> See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

<sup>1026</sup> See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 1, 6; Statement of Former 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 168, at 2.

<sup>1027</sup> See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2.

<sup>1028</sup> See Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 2-4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1, 3.

when a cadet is recommended for disenrollment.<sup>1029</sup> Whether either or both legal offices are involved depends mainly upon personnel within the Training Group recognizing that the more serious forms of discipline may be appropriate. This recognition may be affected by differing views among leadership about the appropriate use of cadet discipline for actions that could also be considered crimes. (Over time, cadet discipline has been used for a variety of actions which, if proven, could qualify as UCMJ violations.)<sup>1030</sup>

As of February 2003, the 10<sup>th</sup> Air Base Wing Staff Judge Advocate and the Academy Legal Office Chief of Justice now meet prior to the Commandant's "Cops and Robbers" meeting to discuss the cases that will be briefed to avoid confusion or conflict, and to ensure that cadet misconduct cases are handled appropriately.<sup>1031</sup>

In making disciplinary decisions, Academy leadership has not consistently used nonjudicial punishment under Article 15 of the UCMJ.<sup>1032</sup> In recent years, there has been a misconception among Academy leadership, the 10<sup>th</sup> Air Base Wing Legal Office and the Academy Legal Office, that cadets should not be disciplined through the nonjudicial punishment process because a nonjudicial punishment action did not follow the cadet on to active duty and because there was little "punishment" that could be imposed on a cadet.<sup>1033</sup> Because the command considered nonjudicial punishment not to be a viable alternative for cadet misconduct, the balancing test became whether the case warranted action in the cadet disciplinary system versus a court-martial,<sup>1034</sup> without consideration for use of nonjudicial punishment. (Some leaders observed that, in their views, imposition of cadet discipline may have a more immediate and effective impact in cases than the use of nonjudicial punishment).<sup>1035</sup>

<sup>1029</sup> See Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3.

<sup>1030</sup> See Memorandum for Record, Trend Analysis of Discipline Data, Exhibit 147; Talking Paper, Area Defense Counsel Involvement in Disciplinary System, Exhibit 255.

<sup>1031</sup> See Memorandum for Record, 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 256, at 1; Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 9.

<sup>1032</sup> Article 15, UCMJ, authorizes commanders to impose nonjudicial punishment for violations of the UCMJ. The amount of punishment that can be imposed is significantly less than could be imposed by a court-martial. The member can decline nonjudicial punishment and demand a court-martial. MCM, Part V. See Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1-2; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of Brig Gen Gilbert, Exhibit 10, at 56-63; Statement of Col Slavec, Exhibit 23, at 117; Statement of 10<sup>th</sup> Air Base Wing Commander, Exhibit 257, at 2.

<sup>1033</sup> See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2; Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 48; Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7; Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of 10<sup>th</sup> Air Base Wing Commander, Exhibit 257, at 2. However, while no cadet received nonjudicial punishment during calendar year 2002, as recently as 2001 and 2000, cadets did receive nonjudicial punishment. Memorandum for Record, Interview with Chief, AMJAMS and Special Projects, Re: Cadet Disciplinary Statistics, March 20, 2003, Exhibit 413. Automated Military Justice Analysis and Management System (AMJAMS) indicates the following numbers of nonjudicial punishment actions were offered to USAFA cadets from 1993 to 2002: 1993 – two; 1994 – eight; 1995 – eighteen; 1996 – eight; 1997 – zero; 1998 – zero; 1999 – zero; 2000 – three; 2001 – five; and 2002 – zero. No nonjudicial punishments were served on a cadet for any sexual misconduct offense from 1997 to 2002. AMJAMS Query, Article 15s for Sexual Misconduct, February 21, 2003, Exhibit 258. For an explanation of AMJAMS, see Memorandum for SAF/GCM, Analysis of USAFA Military Justice Data, Exhibit 259, at Attachment 3.

<sup>1034</sup> See Statement of Academy Legal Office Chief of Military Justice, Exhibit 254 at 9; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 5; Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 118-119.

<sup>1035</sup> See Statement of Brig Gen Welsh, Exhibit 64, at 56-57; Statement of Brig Gen Gilbert, Exhibit 10, at 60-63. See also the statement of Maj Gen Lorenz who indicated cadet discipline was "harder" on a cadet than nonjudicial

Recently, the new 10<sup>th</sup> Air Base Wing Staff Judge Advocate discussed with Brig Gen Gilbert the appropriateness of using nonjudicial punishment for cadet misconduct. Academy leadership now considers nonjudicial punishment an option for cadet misconduct,<sup>1036</sup> and the Academy Legal Office concurs with this decision.<sup>1037</sup>

#### **D. Release of Information to Victims and Others**

Some victims at the Academy have complained about an inability to obtain information related to their cases.<sup>1038</sup> Other cadets at the Academy have complained that they were unaware of sexual assaults occurring at the Academy and believe they should have been informed.<sup>1039</sup>

Under the Air Force Instruction and Academy Instruction on victim and witness assistance, victims are entitled to certain information relating to the investigation of their allegations, the disposition of the case and the status of the accused.<sup>1040</sup> The instructions create no entitlements to others who are neither victims nor witnesses. However, as members of the general public, others may be able to obtain some information, as discussed below.

##### **I. Release of Information to Victims While Case is Pending**

While the case is still under investigation, Air Force Instruction 51-201 provides that victims may receive, upon request, information about: the status of the investigation to the extent that it will not interfere and is appropriate, the accused's pre-trial status and any subsequent changes in that

punishment. Statement of Maj Gen Lorenz, Exhibit 52, at 62-63. Major General Lorenz also questioned why the Academy would consider commissioning a cadet who received nonjudicial punishment. He recommended disenrollment of the cadet although he could not recall for certain whether the cadet also received nonjudicial punishment as well. *Id.* at 61.

<sup>1036</sup> See Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 117-120; Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7. According to the 10<sup>th</sup> Air Base Wing Staff Judge Advocate, when a cadet now receives nonjudicial punishment, that punishment can be placed in an Unfavorable Information File that may follow the cadet on to active duty. Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2; Memorandum for Record, Interview with 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 256, at 1-2. An Unfavorable Information File contains derogatory data on an individual and may contain nonjudicial punishment for up to two years.

<sup>1037</sup> See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2; Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 7. Two cadets recently received nonjudicial punishment, but these were unrelated to any type of sexual assault. See Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 1-2; statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2. Cadet misconduct cases such as DUIs are now considered for nonjudicial punishment action as well as other disciplinary tools.

<sup>1038</sup> See Memorandum, Interview with Former Female Cadet Victim, Exhibit 260, at 5; and Statement of Two First-Class Female Cadets, Exhibit 136, at 3.

<sup>1039</sup> Statement of Male First-Class cadet, Exhibit 201 (cadets did not realize there was a problem until people started talking about it. The Academy administration does not keep cadets informed about what is happening at the Academy. Because information is not disseminated, speculation among cadets is rampant); Memorandum for Record, Group Interview with Female Cadets, Exhibit 218 (It takes a long time to resolve a case and leadership is silent about the cases); See Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 6, 9-10, 14, 20, 22 ("I NEVER heard any official message or word of what happened, or even if anything was being done." "I recently overheard how many cadets have been raped over the last four years. I really wish that they would make this information more available to cadets." "I think the Academy should be more upfront about sexual assault. If it happens, let us know"). See Memorandum for Record, Group Interview with CASIE Reps, Exhibit 152.

<sup>1040</sup> See generally Air Force Instruction 51-201, Chapter 7 and USAFA Instruction 51-201. Disclosure of information must be in accordance with the Privacy Act and Freedom of Information.

status.<sup>1041</sup> Victims are also entitled to be consulted so their views may be obtained regarding: the decision not to prefer court-martial charges, the dismissal of charges, pretrial confinement, pretrial agreement negotiations, and discharge in lieu of trial by court-martial.<sup>1042</sup> There is some evidence to suggest that victims at the Academy were not routinely consulted nor their views obtained regarding the decision not to prefer charges.<sup>1043</sup>

## 2. Release of Information to Victims Upon Disposition of Case

Once a case is completed, a victim may request documents, such as law enforcement investigative reports, the Article 32 report,<sup>1044</sup> or the transcript of the trial or information about the disposition of the case. Air Force Instruction 51-201 addresses documents and agency records created during the course of the military justice process and any document or record incorporated into a military justice document or record. The instruction states that such documents may be released to victims or others, if appropriate, pursuant to a Freedom of Information Act (FOIA) request.<sup>1045</sup>

FOIA is a federal law that facilitates public access to information held by the federal government. FOIA favors release unless information falls within one of nine exemptions which provide a basis for withholding information.<sup>1046</sup> Three of these exemptions found at 5 U.S.C. 552(b) are relevant to requests most likely to be made by sexual assault victims or others.<sup>1047</sup> For example, if a victim requests a copy of the Article 32 report, the requestor may appropriately be denied portions of the report under Exemption 5 of FOIA which allows withholding of documents generated within a federal agency like the Air Force or between federal agencies which would normally be privileged in civil court litigation.<sup>1048</sup> Documents that fall into this category would include attorney work product and pre-decisional documents. Portions of the Article 32 report may be considered pre-decisional because it provides an analysis of evidence related to the case as well as a recommendation about whether trial is appropriate; this information is provided to a convening authority who determines whether to send a case to trial.

Victims or others may also request copies of investigative reports or other information generated by AFOSI.<sup>1049</sup> These may be properly withheld under Exemption 7. This exemption

<sup>1041</sup> Air Force Instruction 51-201, ¶ 7.10.6.1 through 7.10.6.5.

<sup>1042</sup> *Id.* at ¶ 7.10.10.

<sup>1043</sup> Statement of Vice Commandant, (July 1998 to 1999), Exhibit 51 at 19; Statement of Vice Commandant, (Sept. 2000 to January 2001), Exhibit 261, at 24; *but see* Memorandum for Record, Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 2.

<sup>1044</sup> An Article 32 is a pre-trial investigation conducted by an impartial investigating officer to consider charges that have been preferred [formal accusations] and to make a recommendation as to the appropriate disposition of the case. The investigating officer generates a report that summarizes the evidence received in the investigation and provides a recommendation, similar to a grand jury, as to whether a case should go to trial. The recommendation is forwarded to the convening authority who has the authority to refer a case for trial by court-martial. *See generally* UCMJ art. 32.

<sup>1045</sup> *See* Air Force Instruction 51-201, ¶ 12.7.

<sup>1046</sup> *See generally* 5 U.S.C. § 552.

<sup>1047</sup> *See* 5 U.S.C. § 552(b)(5), (6) and (7).

<sup>1048</sup> 5 U.S.C. § 552(b)(5). Ordinarily, the factual portions of the report must be released pursuant to FOIA, but the deliberative portions (the Investigating Officer's analysis and conclusions) would be protected from release by Exemption 5.

<sup>1049</sup> Statement of Brig Gen Welsh, Exhibit 64 at 70-71 (parents of a female cadet sexual assault victim called the Commandant and AFOSI frequently to ask what was going on in the investigation Statement of Two First-Class Female Cadets, Exhibit 136, at 3 (victim requested AFOSI report and did not receive it, stating she was advised by

allows the withholding of law enforcement information if, among other reasons, the release could reasonably be expected to interfere with enforcement, if the release could deprive an accused of a fair trial, or if it could reasonably be expected to constitute an unwarranted invasion of personal privacy.<sup>1050</sup>

Victims may be interested in knowing what punishment, if any, the accused received.<sup>1051</sup> The release of this type of information generally is problematic in that the Privacy Act restricts the release of information to third parties. The general rule under the Privacy Act is that personal information contained in an Air Force record may not be disclosed to anyone without the consent of the individual to whom the record pertains.<sup>1052</sup> This provision contains general exceptions which on first look appear to provide avenues for release of information.<sup>1053</sup> However, as discussed below, the current application of these exceptions do not allow much latitude in the release of information from personnel files to victims.

An exception, under the Privacy Act, allows release without the consent of the individual who is the subject of the record for a published "routine use."<sup>1054</sup> There is currently no published "routine use" in the Air Force authorizing disclosure of otherwise protected information to victims.<sup>1055</sup>

Another exception under the Privacy Act allows release if disclosure is required under the FOIA.<sup>1056</sup> FOIA requires an agency to release personal information when the public interest in disclosure outweighs the privacy interests involved. However, under Exemption 6 of FOIA, personal information may be withheld where disclosure would constitute a "clearly unwarranted invasion of personal privacy."<sup>1057</sup> DoD's FOIA guidance regarding protection of information that qualifies for Exemption 6 under FOIA specifies that there is "no discretion" to release this information.<sup>1058</sup>

A 1991 Opinion of The Judge Advocate General (TJAG) of the Air Force (the guidance available to the field) specifically addressed the issue of disclosure of information to victims about adverse administrative actions.<sup>1059</sup> It stated that "the privacy interests generally recognized in protecting information about adverse administration actions outweigh any public interest in disclosure."<sup>1060</sup> The TJAG Opinion relied on the Supreme Court decision in *DOJ v. Reporters Committee for Freedom of the Press*<sup>1061</sup> which held that the public interest contemplated by FOIA is limited to the core purpose for which Congress enacted the FOIA – shedding light on the operations

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AFOSI that it was lost). Note that the staff team located the report and has coordinated with AFOSI to have the document reviewed to determine releasability to the victim.

<sup>1050</sup> 5 U.S.C. § 552(b)7.

<sup>1051</sup> Memorandum, Interview with Female Former Cadet, Exhibit 260, at 5 (victim, now a graduate of the Academy, seeking information about the disciplinary action and nature of discharge of the individual who took advantage of her sexually when she was a cadet.)

<sup>1052</sup> See generally 5 U.S.C. § 552a.

<sup>1053</sup> 5 U.S.C. § 552a(b).

<sup>1054</sup> 5 U.S.C. § 552a(b)(3).

<sup>1055</sup> Opinion of the Judge Advocate General of the Air Force 1991/83, [hereinafter OpJAGAF] Exhibit 263.

<sup>1056</sup> 5 U.S.C. § 552a(b)(2).

<sup>1057</sup> 5 U.S.C. § 552(b)(6).

<sup>1058</sup> DoD Publication 5400.7-R, ¶ C3.2.1.6., available at <http://www.dtic.mil/whs/directives/corres/pub1.html>.

<sup>1059</sup> OpJAGAF 1991/83, Exhibit 263.

<sup>1060</sup> *Id.*

<sup>1061</sup> *United States Dep't of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 771-775 (1989).

and activities of the government. The TJAG Opinion further stated, that a personal 'need to know' generally does not qualify as a "public interest" for the purposes of FOIA. The TJAG Opinion added that this conclusion that the "balancing" of public interest and privacy concerns must favor the offender is supported by the absence of mandatory disclosure provisions in the federal *Victim and Witness Assistance Act*.<sup>1062</sup>

Thus, neither of these exceptions, as written and interpreted, is helpful for victims to obtain information on disposition when the matter is handled administratively rather than through a court-martial.

Air Force Instruction 51-201 provides some guidance on what information on disposition may be passed to victims when the charges against an accused are disposed of by an action other than court-martial. This guidance essentially restates the balancing test required in FOIA under Exemption 6.<sup>1063</sup> It confirms that information regarding the actual administrative disposition is unlikely to be provided to victims based on an Air Force determination that "less serious misconduct, which is handled administratively rather than judicially generally is not considered of sufficient public interest to outweigh the privacy interest of the individual."<sup>1064</sup>

However, the Air Force Instruction does provide that victims may be given some information when cases are handled administratively. It states the victim should be informed of the "general options" available to the offender's commander and the reasons why a commander cannot go further in revealing actions taken. The Air Force Instruction also suggests that the victim may be told that, "the suspect's commander took appropriate administrative action," or that "the suspect's commander took no adverse administrative action."<sup>1065</sup> At the Academy and under the Air Force Instruction, the responsibility to ensure that victims were so advised would have fallen to the 10<sup>th</sup> Air Base Wing Staff Judge Advocate, or a designee, such as a victim liaison officer.<sup>1066</sup> Given that the 10<sup>th</sup> Air Base Wing Legal Office was usually not aware of cases unless the AFOSI was informed and investigated, the Staff Judge Advocate was not in a position to advise victims whose cases were handled administratively,<sup>1067</sup> which is how many of the sexual assault cases at the Academy were handled.<sup>1068</sup>

Victim advocates at the Academy were in a better position to know about sexual assault cases that were handled administratively.<sup>1069</sup> However, the victim advocates followed the Academy Instruction<sup>1070</sup> which appears more restrictive than the Air Force Instruction. The Academy

<sup>1062</sup> OpJAGAF 1991/83, Exhibit 263.

<sup>1063</sup> Air Force Instruction 51-201, ¶ 7.15 In situations where the case is resolved administratively, the legitimate interests of the victim are balanced with the privacy rights of the suspect. It states that "as a general rule, a victim may not be told an individual received punishment under Article 15, UCMJ, [nonjudicial punishment], or the individual received some form of adverse administrative action (e.g., reprimand) "

<sup>1064</sup> Air Force Instruction 51-201, ¶ 12.7.3.

<sup>1065</sup> Air Force Instruction 51-201, ¶ 7.15.

<sup>1066</sup> Air Force Instruction 51-201, ¶¶ 7.7, 7.8; Memorandum, Delegation of VWAP Responsibilities, Exhibit 166. There is no information regarding whether any delegation existed prior to this date.

<sup>1067</sup> Statement of 10<sup>th</sup> Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-5; Statement of Academy Staff Judge Advocate, Exhibit 162, at 12-13.

<sup>1068</sup> Data of Investigated Allegations (Additional Breakdown), Exhibit 383.

<sup>1069</sup> In fact, victim advocates were often unaware of the disposition of cases themselves. Statement of Victim Advocate Coordinator, Exhibit 182, at 4.

<sup>1070</sup> Statement of Victim Advocate Coordinator, Exhibit 50 at 109.

Instruction specifically provides that when cases are handled through the cadet disciplinary system, the information is private and can only be released to the victim with the accused's consent.<sup>1071</sup>

As a practical result, the victim would not likely be advised of the actual administrative disposition under either the Air Force or the Academy Instruction. However, under the Air Force Instruction, the victim would receive some limited information regarding the commander's options and whether the commander took any action.

### 3. Release of Information to Others Regarding Disposition

The same rules that apply to the release of documents and disposition information to victims, also apply to others, including members of the Cadet Wing. Thus, based on the analysis given above, cadets could not be informed of a specific outcome in a particular case.

Some cadets have suggested the use of "Cadet X" letters to inform and educate the Cadet Wing.<sup>1072</sup> A "Cadet X" letter is a document transmitted to all cadets which describes a scenario involving an unnamed cadet known as "Cadet X." The scenario is usually based on a factual incident and is usually designed to allow other cadets to learn from the mistakes of others without embarrassing the unnamed cadet(s).<sup>1073</sup> The Superintendent, Vice Commandant, Deputy Group Training Commander and Victim Advocate Coordinator indicated they had expressed an interest in using "Cadet X" letters to communicate with the Cadet Wing on sexual assault issues, but it never occurred, due to legal, privacy and practical concerns.<sup>1074</sup>

Neither the Privacy Act nor FOIA specifically precludes the use of "Cadet X" letters so long as the letters do not contain prohibited information such as the name of the victim or alleged perpetrator or specific details which would point to the identity of the parties involved.<sup>1075</sup> Of note, there is evidence that the Air Base Wing newspaper has published information regarding nonjudicial punishment given to members, identifying only the rank, squadron, conduct, and punishment imposed.<sup>1076</sup>

To address these issues, the Air Force General Counsel has reviewed the law and options with a view toward providing victims the maximum information possible under the law on the

<sup>1071</sup> USAFA Instruction 51-201, § 1.3.7. Exhibit 55.

<sup>1072</sup> Statement of Female Fourth-Class cadet, Exhibit 200 at 1 (though Cadet "X" letters would be a good idea because the majority of cadets didn't have any idea sexual assaults were occurring at the Academy until the information came out in the media); Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 9-10 (if the leadership were to use "Cadet X" information to brief and advise of precautionary measures taken by leadership, cadet would feel "taken care of, watched over, cared about and not shady like [the cadets who talk about sexual assault at the Academy are] some girl-pride club that has to operate outside of the uniform").

<sup>1073</sup> See Statement of Col Eskridge, Exhibit 124, at 17 (explaining "Cadet X" letters).

<sup>1074</sup> Statement of Lt Gen Dallager, Exhibit 71, at 184-185, and 194 (believed a method of providing feedback on a regular routine basis without compromising confidentiality was "absolutely essential," but suspects "Cadet X" letters were not used because many people believed the system was working well); Statement of Col Eskridge, Exhibit 124, at 17 (pushed the use of "Cadet X" letters, but met resistance from Legal); Statement of Deputy Training Group Commander, Exhibit 264, at 38-39 (met unspecified resistance for three years to use "Cadet X" letters and noted that the base newspaper publishes nonjudicial punishments by identifying only the individual's squadron, rank, conduct, and punishment); Statement of Victim Advocate Coordinator, Exhibit 50, at 109-110 (legal told her use of "Cadet X" letters for sexual assault cases was not permissible.); but see Statement of Vice Commandant, July 1998 to April 1999, Exhibit 51, at 20 (indicating Cadet X letters were used).

<sup>1075</sup> See generally, 5 U.S.C. § 552 and 5 U.S.C. § 552a.

<sup>1076</sup> Statement of Deputy Group Commander, Exhibit 264, at 38-39.

status of their cases. Based on that review, the Secretary of the Air Force has authorized implementation of measures that will provide for expanded discretion to provide information to victims and requested the General Counsel to revise both the Air Force and Academy Instructions accordingly.

### *E. Victim Infractions Associated with Sexual Assault*

Cadets who want to report an offense, including sexual assault, can face a dilemma, if doing so will reveal their own and others' misconduct. Indeed, some cadets expressed concern they would be punished for cadet infractions they have committed that could be revealed during the reporting of the assault.<sup>1077</sup> There has also been a complaint of punishment of a victim for cadet infractions after reporting an assault (while the case was still pending).<sup>1078</sup> The Form 10 process is technically an adjudicatory process, but initiation of that process can have adverse effects on a cadet and can be perceived by them as punishment.

#### 1. Cadet Misconduct and the Form 10 Process.

All Academy personnel have a responsibility to report known suspected violations of established standards to the cadet's chain of command. A cadet also has the responsibility to report his/her own violations of established standards of conduct. This includes a duty to report any violation of the law to civilian or military law enforcement authorities.<sup>1079</sup>

Anyone who reports cadet misconduct uses the Air Force Cadet Wing Form 10, *Report of Conduct*.<sup>1080</sup> An initial review for all offenses is conducted by the AOC/MTL, Operations NCO and the cadet's chain of command in that sequence. The cadet must respond and deliver the Air Force Cadet Wing Form 10 to the element leader, noting on the form whether he or she wishes to contest the action and providing information he or she would like the chain of command to consider.

The Air Force Cadet Wing Form 10 must reach the highest level of authority (Class A, B, C or D) as indicated by the conduct violation(s) alleged by the individual issuing the Form 10.<sup>1081</sup> "The recommended demerits are then awarded for each committed conduct violation. This standardization throughout the Cadet Wing is necessary since demerits are a "measure of conduct" for probation or disenrollment requirements. Since mitigating, extenuating or aggravating circumstances differ, the chain of command may elevate/lower any sanction to the next higher/lower class if appropriate. The cadet squadron commander will seek the awarding official's concurrence for slight deviations and AOC/MTL coordination for significant deviations."<sup>1082</sup>

<sup>1077</sup> Memorandum for Record, Interview with AOC, Exhibit 159; Statement of Victim Advocate Coordinator, Exhibit 50, at 132. See also Statement of Male First-Class cadet, Exhibit 135; Statement of Col Eskridge, Exhibit 124, at 66-67; Memorandum for Record, Group Interview with CASTE Representatives, February 25, 2003, Exhibit 152; Memorandum for Record, Group Interview with Male First, Second and Third-Class cadets, February 27, 2003, Exhibit 161; Memorandum for Record, Group Interview with AOCs, February 25, 2003, Exhibit 153.

<sup>1078</sup> Memorandum for Record, Explanation of Form(s) 10 Received, Exhibit 269, ¶ 5.

<sup>1079</sup> AF Cadet Wing Instruction 51-201, Discipline and Probation System, ¶ 3.1 (Sept. 26, 2001), Exhibit 265.

<sup>1080</sup> AF Cadet Wing Form 10, Report of Conduct, Exhibit 266.

<sup>1081</sup> AF Cadet Wing Instruction 51-201, ¶ 3.2.6., Exhibit 265.

<sup>1082</sup> *Id.* at ¶ 3.2.6.1.

"The class of conduct violation determines the range of demerits and negative consequences according to the level of authority."<sup>1083</sup> The case is forwarded through the immediate chain of command to the appropriate level of authority with recommendations concerning punishment.<sup>1084</sup> During this time, the cadet's limits are the same as for a cadet with outstanding punishments as outlined in Air Force Cadet Wing Instruction 36-3001, *Limits, Liberties and Leave*. Additionally, cadets pending Class D violations are restricted to the squadron duty area, pending final resolution of the Air Force Cadet Wing Form 10.<sup>1085</sup>

When an officer or cadet in the chain of command requests, the cadet is required to provide a statement revealing all information about the incident to include names of cadets or other persons involved, unless the conduct violation(s) is/are punishable under the UCMJ (as determined by a Judge Advocate). If the cadet declines to provide a statement, the case is forwarded for action (including potential disenrollment) based on the available facts.<sup>1086</sup>

## 2. Cadet Perception of the Form 10 Process

Although the issuance of a Form 10 is technically the beginning of an adjudicative process, a cadet is still made aware of these Form 10s and may expect to be punished.<sup>1087</sup> Further, by virtue of a Form 10 being issued a cadet is placed on restriction until it is resolved.<sup>1088</sup> Though the cadet is able to receive passes upon request and approval, the cadet still may perceive this general restriction pending completion of the Form 10 as a form of punishment.<sup>1089</sup>

In a recent case, a sexual assault victim asserted that after reporting the assault she received a Form 10 for fraternization, Class D hits for underage drinking, drinking in the dorms and a Form 10 for having sex in the dorms.<sup>1090</sup> The victim, and a friend of the victim, asserted they believed the punishment for the rule violations was extreme.<sup>1091</sup> The Vice Commandant explained that "she

<sup>1083</sup> *Id.* at ¶ 3.2.6.2.

<sup>1084</sup> *Id.*

<sup>1085</sup> *Id.* at ¶ 3.2.5. See also ¶ 5.4 *Restrictions*. See Memorandum for Record, Interview with Academy Staff Members, Exhibit 267 (the cadet is put on restriction in order to keep track of the cadet until the issue is resolved).

<sup>1086</sup> AF Cadet Wing Instruction 51-201, ¶ 3.2.5, at Note 1, Exhibit 265.

<sup>1087</sup> Statement of Col Eskridge, Exhibit 124, at 45; Statement of Brig Gen Welsh, Exhibit 64, at 46.

<sup>1088</sup> AF Cadet Wing Instruction 51-201, ¶ 3.2.5., Exhibit 265. See Memorandum for Record, Interview with Academy Staff Members, Exhibit 267.

<sup>1089</sup> Memorandum for Record, Interview with Academy Staff Members, Exhibit 267 (aware of one case where a cadet was given a Form 10 and was restricted, for an infraction unrelated to the sexual assault and later rescinded due to the new policy).

<sup>1090</sup> See Memorandum for Record Re: Request to be Moved Back to Squadron 34, October 29, 2002, Exhibit 268; Memorandum for Record Re: Explanation of Form(s) 10 Received, November 19, 2002, Exhibit 269; Statement of First-Class cadet, Exhibit 135, at 1. See also Statement of Col Eskridge, Exhibit 124, at 44; and Statement of Col Slavcev, Exhibit 23, at 161-164. AFW Form 10, Report of Conduct, November 19, 2002, Exhibit 270 and AFW Form 10, Report of Conduct, November 19, 2002, Exhibit 271.

<sup>1091</sup> Memorandum for Record Re: Explanation of Form(s) 10 Received, November 19, 2002, Exhibit 269; Statement of First-Class cadet, Exhibit 135, at 1 (he felt the Class D hits she received for having sex, which resulted from the sexual assault incident in the dormitory, was the most severe punishment given to any cadet; he further thought because the victim was drinking the night of her assault and fraternized with upper classmates those could have been the reasons why she received such a severe punishment; he also thought the victim wanted to resign from the USAFA but he was under the impression the USAFA would not allow her to resign until she served her 260 hours of punishment).

in fact has never been punished" because the Form 10 process has been put on hold until the investigation is complete.<sup>1092</sup>

Similarly, Col Slavec, the Training Group Commander, explained that the Form 10s were being issued at the same time as the assault was being investigated.<sup>1093</sup> She explained a Form 10 is purely administrative and it indicates that a cadet infraction is being investigated. The punishment is not handed out until the investigation is complete.<sup>1094</sup> She stated that she was just following the proper procedure. She stated, "So, insensitive or not, if you look at the black and white of the regulation, she was not granted amnesty, and it was grounds for us to do the job of cadet discipline system. Now, the fact she pursued assault, whether she got amnesty or not, came...after the Form 10 had been established..."<sup>1095</sup> However, Col Slavec knew of no time since she has been there that punishment for a victim has been imposed before the investigation is over.<sup>1096</sup>

The Training Group Commander stated that the Form 10s are issued but she does not hand down the punishment until the investigation is over. She did not see a problem with this process. She stated, "The Form 10 [process] allows us to ensure the good order and discipline of the cadet discipline system is investigated. [Be]cause the cops and [AF]OSI don't care about that."<sup>1097</sup> She also stated that numerous Form 10s have been zeroed out. It is decided on a case-by-case basis.<sup>1098</sup>

The Training Group Commander explained that there are instances, however, where Form 10s are processed against a victim for cadet infractions and the cadet is also requesting amnesty through CASIE. As the Vice Commandant is the only person given the information from CASIE, the Training Group Commander may not be aware that the person to whom she is issuing Form 10s is a victim of sexual assault requesting amnesty.<sup>1099</sup>

The Commandant also stated he could see why initiation of Form 10s is problematic during a sexual assault case and initiated two Cadet Information Files that amended the amnesty policy.<sup>1100</sup> The cadets have a reasonable basis to believe that, generally Form 10s initiated are Form 10s completed.<sup>1101</sup> The Superintendent opined that if a cadet receives a Form 10 his or her perception is going to be that punishment is imminent.<sup>1102</sup> The Vice Commandant explained that if a cadet receives a Form 10, the cadet thinks: "You're going to be hung. I mean yeah, as a cadet that's the

<sup>1092</sup> Statement of Col Eskridge, Exhibit 124, at 44. Colonel Eskridge explained that the disciplinary process for related cadet infractions was initiated before Command was informed of the alleged sexual assault. *Id.* at 38. See Statement of Brig Gen Gilbert, Exhibit 10, at 78-80. See also Statement of Academy Chief of Military Justice, Exhibit 91, at 6.

<sup>1093</sup> Statement of Col Slavec, Exhibit 23, at 162; Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

<sup>1094</sup> Memorandum for Record, Interview with Col Slavec, Exhibit 272, at 2. See also Statement of Brig Gen Gilbert, Exhibit 10, at 79-81. See also Statement of Col Slavec, Exhibit 23, at 164.

<sup>1095</sup> Statement of Col Slavec, Exhibit 23, at 139.

<sup>1096</sup> *Id.* at 164. See also Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

<sup>1097</sup> Statement of Col Slavec, Exhibit 23, at 74.

<sup>1098</sup> *Id.* at 84-85.

<sup>1099</sup> *Id.* at 52-53. See also Statement of Brig Gen Gilbert, Exhibit 10, at 46-47, 50-51; Statement of Lt Gen Dallager, Exhibit 71, at 71-73.

<sup>1100</sup> Statement of Brig Gen Gilbert Exhibit 10, at 80-81. See CIF 03-10 and 03-11, Exhibit 146. These Cadet Information Files state that no action will be taken under the cadet disciplinary system (i.e., Air Force Cadet Wing Form 10, Report of Conduct) upon cadets alleging they are victims of sexual assault until the allegations are thoroughly investigated by the appropriate agencies.

<sup>1101</sup> Statement of Col Eskridge, Exhibit 124, at 45. See Statement of Lt Gen Dallager, Exhibit 71, at 74; Statement of Brig Gen Welsh, Exhibit 64, at 46.

<sup>1102</sup> Statement of Lt Gen Dallager, Exhibit 71, at 74.

way I felt. If I got a Form 10 it was, well, that's going through. I don't think that's changed in forty years. If a form is coming through, you are going to end up with something."<sup>1103</sup>

The *Agenda for Change* provision on amnesty will prevent the imposition of discipline on victims for cadet infractions that were part of the circumstances of a sexual assault.

#### **F. Specific Cases Involving Administrative Responses**

The Working Group identified some victims who expressed concerns over aspects of the administrative responses to their allegations of sexual assault. Individual victims asserted discontent with administrative hold, medical turnbacks, and squadron changes. What follows is a description of the processes that were used and the basis for each.

##### **1. Administrative Hold**

Air Force Instruction 36-2110 allows for deferment of assignments to allow for availability of Air Force members for various reasons.<sup>1104</sup> For example, it provides a commander the authority to retain an officer for a UCMJ investigation.<sup>1105</sup> It also allows witnesses to be placed on administrative hold by the Legal Office to ensure the witness's availability for a court-martial or certain non-criminal trials in the United States, state, or federal courts.<sup>1106</sup> Placement on administrative hold precludes an individual from being reassigned and from being sent on temporary duty (TDY).<sup>1107</sup>

In one case, in 2002, a victim asserted the Training Group Commander placed her on administrative hold and she was unable to leave the Academy while the investigation of her allegation was pending.<sup>1108</sup> To assist the victim, who still wanted to go home, the Chief of Military Justice at the Academy legal office discussed the idea of an administrative turnback.<sup>1109</sup> The victim requested to be on administrative turnback<sup>1110</sup> but was told her request was denied by the Training Group Commander because she was still on administrative hold.<sup>1111</sup>

<sup>1103</sup> Statement of Col Eskridge, Exhibit 124, at 45.

<sup>1104</sup> Air Force Instruction 36-2110, § 2.15; Air Force Instruction 36-2110, Attachment 1, Deferment. The instruction allows for a deferment, defined as [a] personnel management tool, used to preclude or delay assignment selection of an individual or group when in the best interest of the Air Force...When a person has an Assignment Availability Code they are ineligible for reassignment until their date of availability except for a mandatory PCS [Permanent Change of Station] or when the assignment Office of Primary Responsibility (OPR) waives the deferment. See Air Force Instruction 36-2110, Table 2.1.

<sup>1105</sup> Air Force Instruction 36-2110, § 2.15; Air Force Instruction 36-2110, Table 2.1, Rule 14, Assignment Availability Code.

<sup>1106</sup> *Id.* at § 2.15 and Table 2.1, Rule 8, Assignment Availability Code 14.

<sup>1107</sup> *Id.* at § 2.15. Air Force Instruction 36-2120, Attachment 1 [temporary duty (TDY) for assignment purposes, is duty performed at a location other than a person's permanent duty location].

<sup>1108</sup> See Memorandum for Female Cadet, October 22, 2002, Exhibit 273. See Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 5-6; Statement of Colonel, Exhibit 162, at 11.

<sup>1109</sup> The administrative turnback program is an option for a cadet who may want to temporarily leave the Academy to resolve a temporary hardship. It can prevent resignations of cadets otherwise able to successfully complete graduation and commissioning requirements. Requests for administrative turnbacks are cadet-initiated through the squadron AOC and must be fully supported by the Commandant. Final authority for all administrative turnback requests rests with the Superintendent. USAFA Instruction 36-169, § 2.

<sup>1110</sup> Request for Administrative Turnback, November 18, 2002, Exhibit 274.

<sup>1111</sup> See Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 5. See also Statement of Colonel, Exhibit 162, at 11.

The victim had been placed on administrative hold by the 34<sup>th</sup> Training Wing because of her potential to be called as a witness.<sup>1112</sup> Normally only the legal office or AFOSI will initiate such a hold; however, the Chief of Military Justice stated in his interview that he felt the placement of the cadet on administrative hold by the 34<sup>th</sup> Training Wing was proper under the circumstances.<sup>1113</sup> The Chief of Military Justice questioned the Training Group Commander's position that an administrative hold precluded the granting of an administrative turnback and directed the matter to the Superintendent for decision, where the administrative turnback was approved.<sup>1114</sup>

This specific case is currently under review by the Air Force Inspector General based on the cadet's complaint.

## 2. Medical Turnbacks and Mental Health Evaluations

One cadet complained that a doctor considering her case in the context of a Cadet Medical Evaluation Board and a medical turnback was improperly influenced by command.<sup>1115</sup> In that case, she requested that she receive a medical turnback in lieu of a medical disenrollment and it was granted by the Superintendent.<sup>1116</sup> The case is being evaluated by the Air Force Inspector General.

A medical turnback is used for a cadet suffering from a temporary disqualifying medical condition to allow him or her to leave the Academy for a specified period of time, usually no more than two semesters, and to then return if the condition can be resolved within that time. A request for medical turnback is typically not cadet-initiated.<sup>1117</sup>

Interviews were conducted with the two primary cadet medical evaluators at the 10<sup>th</sup> Medical Group/Life Skills Center. They advised that during this evaluation process command does not relay what command believes should be the appropriate outcome of a medical evaluation. Though an AOC may give his personal opinion regarding what outcome would be best for the cadet, there is no pressure by command to reach the same conclusion.<sup>1118</sup> Instead, command allows

<sup>1112</sup> Statement of Col Slavec, Exhibit 23, at 84. See Memorandum for Female Cadet, October 22, 2002, Exhibit 273; statement of Academy Chief of Military Justice, Exhibit 91, at 5. See also Statement of Colonel, Exhibit 162, at 11.

<sup>1113</sup> Statement of Academy Chief of Military Justice, Exhibit 91, at 5. Cadets are considered officers for purposes of Air Force Instruction 36-2110 providing the 34<sup>th</sup> Training Wing authority to place the victim on administrative hold as part of a UCMJ investigation. See Memorandum for Record, Interview with Academy Legal Office Chief of Military Justice, April 17, 2003, Exhibit 276.

<sup>1114</sup> Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 5-6; see also Statement of Colonel, Exhibit 162, at 11; Request for Administrative Turnback, November 18, 2002, Exhibit 274; Memorandum to Superintendent Recommending Turnback, January 22, 2003, Exhibit 277; and AF Form 1768, Staff Summary Sheet, Administrative Turnback, February 3, 2003, Exhibit 278.

<sup>1115</sup> See Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 3; see also Talking Paper on Alleged Sexual Assault, January 24, 2003, Exhibit 279 (cadet was required, as part of mandatory out processing procedures, to attend the Counseling Center for two sessions on July 27, 2001 and July 30, 2001, based on discussions from the first session, she expressed interest in pursuing a medical turnback due to her history of assault). See also Request for Administrative Turnback, Exhibit 280; Memorandum for Cadet, Medical Turnback, Exhibit 281; AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, Sept. 28, 2001, Exhibit 282; AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, July 24, 2002, Exhibit 283.

<sup>1116</sup> AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, Sept. 28, 2001, Exhibit 282; Memorandum for Cadet, Medical Turnback, Exhibit 281; Memorandum For Cadet, Administrative Turnback, Sept. 3, 2001, Exhibit 284.

<sup>1117</sup> USAFA Instruction 36-169 ¶ 3.1.

<sup>1118</sup> Statement of Staff Psychiatrist, 10<sup>th</sup> Medical Group/Life Skills Center, Exhibit 29, at 4.

the doctors to make the call. The commanders describe their concerns and let the doctors determine if it meets criteria for a diagnosis, and if it meets criteria for a cadet medical evaluation board.<sup>1119</sup>

Interviews showed no process problems.<sup>1120</sup>

### 3. Change of Victim's Squadron After Reporting a Sexual Assault

According to documentary evidence, between 1993 and 2003, five victims have been moved to another squadron after reporting an assault.<sup>1121</sup> According to the Commandant, individual moves do not occur frequently, but it is not uncommon for a cadet to request a move due to a personality conflict with someone in the squadron. Involuntary moves by cadets also occur; however, they are less frequent.<sup>1122</sup> There are neither specific criteria nor a standard policy used in deciding whether to move an alleged victim.<sup>1123</sup> Where both alleged assailants and victims are in the same unit, separating them may be necessary. Reasons provided by command for moving the victim rather than the suspect may include: providing a cadet an opportunity to succeed in a new environment; keeping alleged perpetrators under a command that knows them; and avoiding issues regarding prejudging the accused.

We are aware of one case where an alleged victim of sexual assault complained about being moved to a new squadron after alleging an assault. In this case, a Fourth-Class cadet asserted that after reporting her assault she was told she was being moved though she wanted to stay in her current squadron and with her current roommate.<sup>1124</sup> The victim further stated her belief that victims of sexual assaults should not be removed from people who are supportive of them.<sup>1125</sup> In this case, the alleged assailants were in the victim's squadron. She believed the alleged assailants should be moved but was told they were not moved because the case was still under investigation and that moving them before it was completed would be treating them as if they were criminals.<sup>1126</sup>

Although other options were discussed, the Command reported that they moved the victim to a new squadron for her safety and to provide her with a new environment where she could succeed, free of a number of issues that had arisen in her squadron.<sup>1127</sup> The Commandant stated that

<sup>1119</sup> Statement of Flight Commander, Life Skills Center, Exhibit 179 at 34-35.

<sup>1120</sup> *Id.* at 35-36 (stating command has not really biased him with their thoughts and that if he is to decide whether a person should be disenrolled he wants to give the person the benefit of the doubt; he had never reached conclusion with the commander); see Statement of Staff Psychiatrist, 10<sup>th</sup> Medical Group/Life Skills Center, Exhibit 29.

<sup>1121</sup> See Data of Sexual Assault Allegations (cadet-on-cadet allegations), Exhibit 383, Attachment 4. See also Statement of Lt Gen Dallager, Exhibit 71, at 78 (he knows of a handful of alleged victims who have been moved into a new squadron).

<sup>1122</sup> Statement of Brig Gen Gilbert Exhibit 10, at 76-77.

<sup>1123</sup> See Statement of Lt Gen Dallager, Exhibit 71, at 78-79. See also Statement of Col Eskridge, Exhibit 124, at 84, 87.

<sup>1124</sup> Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275 (cadet's request was denied and she was told that she was being moved for safety reasons, she was moved immediately to another room which was as far geographically as is possible at the Academy and was not allowed to interact with cadets from other squadrons). See also Memorandum for Record, Re: Request to be Moved Back to Squadron 34, October 29, 2002, Exhibit 268. See also Statement of Brig Gen Gilbert, Exhibit 10, at 75.

<sup>1125</sup> See Memorandum for Record, Interview with Male First-Class cadet, Exhibit 285, (stating his concern over leadership's decision to move the victim to another squadron because a cadet's squadron becomes like family so moving can be traumatic).

<sup>1126</sup> See Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 4.

<sup>1127</sup> Statement of Col Slavec, Exhibit 23, at 157-158. See also Statement of Deputy Training Group Commander, Exhibit 264, at 50-51; Statement of Brig Gen Gilbert, Exhibit 10, at 77; and Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

after the move was made he received information that CASIE representatives recommended that the victim not be moved. In hindsight, the Commandant would have made sure that everyone was involved including calling the Cadet Counseling Center to receive their input.<sup>1128</sup>

There are neither criteria nor a set policy used when deciding whether to move alleged assailants to a new squadron. The leadership explained that the alleged assailants were not moved to another squadron because in the past it was viewed as punishing the accused before they have been found guilty of the alleged crime.<sup>1129</sup> However, it appears legal advice was not sought by leadership when making the decision in this particular case.<sup>1130</sup> The Commandant also reasoned that when a cadet is in trouble, as with her assailants, he likes to keep them with the same squadron commander, who already knows the cadet, and can work the discipline issues.<sup>1131</sup> It appears that, at a minimum, in this situation, the coordination process contemplated as a function of the Sexual Assault Services Committee, or otherwise, was not occurring.<sup>1132</sup>

<sup>1128</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 77-78.

<sup>1129</sup> Statement of Col Eskridge, Exhibit 124, at 85-86. See also Statement of Col Slavec, Exhibit 23, at 159; and Statement of Brig Gen Gilbert, Exhibit 10, at 76-78.

<sup>1130</sup> Statement of Staff Judge Advocate, Colonel, Exhibit 162, at 11, (stating that his office was neither involved nor consulted in moving the victim to a new dorm). Memorandum for Record, Telephonic Interview with Academy Legal Office, Chief of Military Justice, Exhibit 286, (stating that neither legal office was consulted by leadership when they were determining whether to move the alleged victim or alleged assailants to a new squadron). Statement of Col Robert Eskridge, Exhibit 124 at 43-44, 85, (He stated that moving the alleged assailants was discussed, however, "the legal guys said no." He could not remember which judge advocate provided the advice. Colonel Robert Eskridge was not involved in the decision to move the victim.)

<sup>1131</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 76. See Statement of the Deputy Training Group Commander, Exhibit 264, at 50-51. (The Deputy Training Group Commander explained that it was an option to move the alleged assailants, however, she does not like to "move her problem child[ren] on to someone else.")

<sup>1132</sup> For discussion relating to the Sexual Assault Services Committee, see this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy, and Section III.F.3, The Air Force Victim and Witness Assistance Council and the Academy's Sexual Assault Services Committee. See generally statement of Brig Gen Gilbert, Exhibit 10, at 75-78; Statement of Col Eskridge, Exhibit 124 at 84-87.

## **VI. Leadership Issues Pertaining to Sexual Assault at the Academy**

During the ten-year time period reviewed by the Working Group, Academy leadership had varying degrees of involvement in sexual assault issues, ranging from direct focus on assault processes and cases to indirect focus on issues of character and leadership. Beginning with the development of the Academy's program in 1993, Academy Superintendents have been proactively involved in sexual assault issues, however, this direct focus by the Superintendents on sexual assault issues appeared to gradually lessen after 1997, as did that of Commandants, due in part to competing demands. This reduction in focus combined with friction among the Academy's various mission elements, misunderstanding of roles, a discipline environment that was responding to standards of conduct issues and perceived to be harsh, and diminishing activity by the committee responsible for oversight of sexual assault issues, produced an environment less attentive to victim concerns and factors in Academy life affecting sexual assaults, and which was less capable of a coordinated response to individual cases than in earlier years.

### ***A. Command Involvement***

As noted, an alleged sexual assault of a female cadet in 1993 caused the Superintendent at the time, Lt Gen Bradley C. Hosmer, to become personally and substantially involved in responding to sexual assaults at the Academy. Based on our interviews, this senior level emphasis and attention to sexual assault issues continued under Lt Gen Paul E. Stein, the Superintendent from 1994 to 1997. According to the Vice Commandant at the time, Lt Gen Stein was interested and concerned about sexual assault issues.<sup>1133</sup>

The Sexual Assault Services Committee was created in 1995 and continued the emphasis on a victim-controlled process. Lieutenant General Stein was instrumental in preparing and presenting a briefing to the Surgeon General, the Inspector General and the Judge Advocate General in 1997 that led to the Academy receiving a one-year waiver to the sexual assault reporting requirements in Air Force Instruction 44-102.<sup>1134</sup> The Sexual Assault Services Committee was thereafter formally chartered when the Academy implemented USAFA Instruction 51-201 on July 15, 1997, two weeks before Lt Gen Stein relinquished command to Lt Gen Oelstrom.<sup>1135</sup> During this time period, to deter and prevent sexual assaults, the Academy provided self-defense training in the sexual assault context, established rules regarding dormitory room doors remaining open when male and female cadets were in the same room, and there were roving patrols of officers and cadets in the dormitories at night.<sup>1136</sup> During Lt Gen Stein's tenure, sexual assault was added to the cadet Social Climate Survey.<sup>1137</sup>

<sup>1133</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 11. The Victim Advocate Coordinator had a similar opinion. Statement of Victim Advocate Coordinator, Exhibit 182, at 18.

<sup>1134</sup> Statement of Victim Advocate Coordinator, Exhibit 182, at 18; Statement of Brig Gen Wagie, Exhibit 198, at 45, 65, 100. Air Force Instruction 44-102 required Air Force personnel involved in the delivery of medical care to report suspected cases of rape or sexual assault to the Air Force Office of Special Investigations, including the names of the parties involved.

<sup>1135</sup> USAFA Instruction 51-201 (July 15, 1997) Exhibit 86, and Statement of Lt Gen Oelstrom, Exhibit 63, at 4.

<sup>1136</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 39.

<sup>1137</sup> Lieutenant General Stein directed a process action team to develop the 1996 survey and sexual assault questions were included for the first time. See Results of the Social Climate Surveys, 1993-2002, Exhibit 53.

Based on our interviews, it did not appear that Lt Gen Oelstrom had the personal involvement in sexual assault matters that Lt Gen Hosmer and Lt Gen Stein did.<sup>1138</sup> Lieutenant General Oelstrom had some recollection of the Sexual Assault Services Committee, but said he did not recall much interface with them nor ever receiving information from them.<sup>1139</sup>

Lieutenant General Dallager's involvement in sexual assault issues during his tenure as Superintendent, June 2000 to April 2003, is incorporated in the discussion below.

Command involvement with the Sexual Assault Services Committee appeared to have an impact on the Academy sexual assault program. Since its creation in 1995, the Sexual Assault Services Committee<sup>1140</sup> was the focal point for oversight of the sexual assault processes at the Academy.<sup>1141</sup> The Vice Commandant in 1995 was the first chairperson and she served in that role from November 1995 until May 1998.<sup>1142</sup> She held monthly meetings, although she thought it might have been twice per quarter toward the end of her tenure.<sup>1143</sup> There were two Commandants in this time period and, based on our interviews, both showed a strong interest in the Sexual Assault Services Committee.<sup>1144</sup> The Vice Commandant from April 1999 to September 2000 recalled meetings were held once a quarter, although other records indicate the meetings were more frequent.<sup>1145</sup> He briefed the Commandant after each meeting and the Superintendent when significant cases arose.<sup>1146</sup>

In contrast, the Vice Commandant from January 2001 to December 2002 held just five meetings in two years as the Sexual Assault Services Committee chairperson.<sup>1147</sup> There were just two meetings in 2002 and no meetings between the May 2, 2002 and January 31, 2003 meetings, a

<sup>1138</sup> The Victim Advocate Coordinator remembered him attending a briefing in December 1998 where sexual assault data, including sexual assault survey data, was briefed, but that was her only clear recollection of Lt Gen Oelstrom. Statement of Victim Advocate Coordinator, Exhibit 182, at 21-22. The Chief of Sexual Assault Services presented the briefing to the Academy's senior leadership in an effort to secure approval to show a video that was somewhat controversial during Sexual Assault Awareness Month. Lieutenant General Oelstrom approved the request. Statement of Chief of Sexual Assault Services, 1997 to 1999, Exhibit 68, at 2. See also this Report, Section III.A., The 1993 Sexual Assault Program.

<sup>1139</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 31.

<sup>1140</sup> See this Report, Section III., The Victim and Witness Assistance Program, for a comprehensive description of the Sexual Assault Services Committee.

<sup>1141</sup> See USAFA Instruction 51-201, § 2.4, Exhibit 55.

<sup>1142</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 17.

<sup>1143</sup> *Id.*

<sup>1144</sup> According to the former Sexual Assault Services Committee chairperson, Brig Gen Hopper (Commandant from 1994 to 1996) and Maj Gen Lorenz (Commandant from 1996 to 1999), "were very interested in the outcome and they required feedback after the meetings and any time there was any kind of report that was brought up, they both wanted to know instantly." *Id.* at 35. Likewise, Lt Gen Stein (Superintendent from 1994 to 1997) was engaged with the Sexual Assault Services Committee. The former Vice Commandant (1995-1998) said, "General Stein, in particular, was very attuned to what was going on. This was his—I mean he was so concerned over the issue that he wanted to know everything that happened." *Id.* at 36. She also said Lt Gen Oelstrom was briefed when an incident was reported. *Id.* at 20.

<sup>1145</sup> Statement of Vice Commandant (1999 to 2000), Exhibit 66 at 3 and 10. The next Vice Commandant held a meeting in September 2000 and the minutes reflect monthly meeting dates for the remainder of the year. Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70. The Victim Advocate Coordinator, who was involved throughout this period, noted that the Committee switched to quarterly meetings after the arrival of a new Vice Commandant in 2001. Statement of Victim Advocate Coordinator, Exhibit 50, at 134, 136. The change to quarterly meetings is noted in the minutes for the March 7, 2001 meeting. Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74.

<sup>1146</sup> Statement, Director of Admissions (Former Vice Commandant) at 12, 16.

<sup>1147</sup> Sexual Assault Services Committee Meeting Minutes, Exhibit 74 through 80.

period of nearly nine months.<sup>1148</sup> At the March 7, 2001 meeting, the Vice Commandant announced that the Committee would meet quarterly and the next meeting would be May 9, 2001.<sup>1149</sup> We found no record of any meeting in May 2001 and it appears the next meeting was not until October 5, 2001.<sup>1150</sup> The Vice Commandant said he briefed the Commandant after each meeting and he recalled briefing the Superintendent and the Commandant twice a year or when a significant case arose.<sup>1151</sup> The Commandant at the time, Brig Gen S. Taco Gilbert, did not recall receiving information from the Sexual Assault Services Committee.<sup>1152</sup> Likewise, the Superintendent at the time, Lt Gen Dallager, said he did not receive any regular reports or briefings from the Sexual Assault Services Committee,<sup>1153</sup> but he did receive briefings from the Cadet Counseling Center in April and November 2002.<sup>1154</sup> The briefings included the number of sexual assault reports the Cadet Counseling Center received annually.<sup>1155</sup>

The administration of the Sexual Assault Services Committee did not fully comply with the requirements of USAFA Instruction 51-201 from the time the Instruction was implemented on July 15, 1997. The Instruction designates the Commandant as the Committee's chairperson,<sup>1156</sup> yet most Commandants, before and after implementation of the Instruction, had little direct involvement with the Committee, and were even less involved as time went on. Major General Stephen R. Lorenz, the Commandant at the time the Instruction was implemented and continuing until June 1999, and then a Brigadier General, said he often chaired the Sexual Assault Services Committee meetings and his Vice Commandant chaired the meetings he could not attend.<sup>1157</sup> The Chief of Sexual Assault Services in the Cadet Counseling Center from 1997 to 1999 said (then) Brig Gen Lorenz's direct and personal involvement in the Sexual Assault Services Committee gave the committee credibility.<sup>1158</sup> Brigadier General Lorenz was actively involved and requested his own notebook on

<sup>1148</sup> Sexual Assault Services Committee Meeting Minutes for February 21, 2002, Exhibit 79, and Sexual Assault Services Committee Meeting Minutes for May 2, 2002, Exhibit 80. The January 31, 2003, meeting was chaired by Col Eskridge who became the Vice Commandant on December 20, 2002. The lengthy delay between the May 2, 2002 and January 31, 2003 meetings was the result of personnel changes and scheduling conflicts. Statement of Col Eskridge, Exhibit 124, at 4, 23-24; Statement of Chief of Sexual Assault Services from 2001 to 2002, Exhibit 83, at 1; Memorandum for Record, Interview with Chief of Sexual Assault Services from 2002 to Present, Exhibit 20, at 1; Statement of Vice Commandant from 2001 to 2002, Exhibit 59, at 3; and Sexual Assault Services Committee Meeting Minutes, Exhibit 74 to 81.

<sup>1149</sup> Sexual Assault Services Committee Meeting Minutes for March 7, 2001, Exhibit 74.

<sup>1150</sup> Sexual Assault Services Committee Meeting Minutes for October 5, 2001, Exhibit 77.

<sup>1151</sup> Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 24-25, 29, and 31. The former Sexual Assault Services Committee chairperson said he did a formal Sexual Assault Services Committee briefing for the Superintendent and the senior staff (including the Dean of the Faculty, Commandant, and Athletic Director) in the Spring and a more informal briefing in the Fall as required by USAFA Instruction 51-201. He also recalled forwarding the Sexual Assault Services Committee meeting minutes to the Commandant and the Superintendent, and he believes they signed Staff Summary Sheets indicating they reviewed the minutes. *Id.* at 29.

<sup>1152</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 52.

<sup>1153</sup> Statement of Lt Gen Dallager, Exhibit 71, at 49-50.

<sup>1154</sup> Statement of Victim Advocate Coordinator, Exhibit 50, at 62; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; and Memorandum for Record, Interview with Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 3.

<sup>1155</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2-3, and Memorandum for Record, Interview with Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 3. See Briefing Slides, Sexual Assault Services, Exhibit 85.

<sup>1156</sup> USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

<sup>1157</sup> Statement of Maj Gen Lorenz, Exhibit 52, at 43. Both of the Vice Commandants who served under Maj Gen Lorenz said they briefed him after each Sexual Assault Services Committee meeting they chaired. See Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 35; Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 15.

<sup>1158</sup> Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2. She said Brig Gen Lorenz's first priority was taking care of sexual assault victims and she described both Brig Gen Lorenz and the Vice Commandant

sexual assaults so he could track trends and he wanted specific information, such as where the incident occurred and whether alcohol was involved, when sexual assaults were reported. He participated in sexual assault awareness functions<sup>1159</sup> and stayed actively engaged with the personnel involved in the sexual assault response process.<sup>1160</sup> After (then) Brig Gen Lorenz left in June 1999, the Vice Commandant resumed chairing the Sexual Assault Services Committee meetings as had been the prior practice.

Brigadier General Mark A. Welsh, the Commandant from June 1999 to August 2001, chaired the November 15, 2000 meeting according to the meeting minutes, although he did not recall chairing the meeting nor did he recall the Sexual Assault Services Committee by name.<sup>1161</sup> The Vice Commandant chaired the other Sexual Assault Services Committee meetings.<sup>1162</sup> Brigadier General Welsh was, however, engaged in working sexual assault issues.<sup>1163</sup> Brigadier General Welsh made an effort to meet with the cadets involved in the CASIE program at least once a semester to "encourage them and tell them how important their work was."<sup>1164</sup> He was concerned that "there was nothing closing the loop with the command chain," so he met with the Victim Advocate Coordinator, the AFOSI Commander, the Security Forces Commander, a judge advocate, a CASIE representative, and his Vice Commandant and developed a form for the Cadet Counseling Center to provide information to command on individual cases.<sup>1165</sup> He also resolved the issue with AFOSI over the Academy not employing the same sexual assault reporting and investigation procedures as the rest of the Air Force, and he met personally with Brig Gen Taylor, the Commander of Headquarters AFOSI, to bring the issue to closure.<sup>1166</sup>

Brigadier General S. Taco Gilbert, the Commandant from August 2001 to April 2003, was familiar with the Sexual Assault Services Committee, but believed the Vice Commandant was the official chairperson.<sup>1167</sup> He said his predecessor, Brig Gen Welsh, and the Vice Commandant

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(1995 to 1998) as being very victim focused. *Id.* at 3. According to the Victim Advocate Coordinator, (then) Brig Gen Lorenz was one of their biggest supporters. Statement of Victim Advocate Coordinator, Exhibit 182, at 26.

<sup>1159</sup> What started as Sexual Assault Awareness Week was expanded to Sexual Assault Awareness Month in 1997.

Statement of Victim Advocate Coordinator, Exhibit 50, at 83.

<sup>1160</sup> *Id.* at 26-27.

<sup>1161</sup> See Sexual Assault Services Committee Meeting Minutes for November 15, 2000, Exhibit 73. Statement of Brig Gen Welsh, Exhibit 64, at 39-40.

<sup>1162</sup> Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10, and statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17.

<sup>1163</sup> The Victim Advocate Coordinator said Brig Gen Welsh was personally engaged and participated in the sexual assault response process. As an example, she recalled him addressing the Cadet Wing during Sexual Assault Awareness Month emphasizing the importance of confronting sexual assault issues. Statement of Victim Advocate Coordinator, Exhibit 182, at 27.

<sup>1164</sup> Statement of Brig Gen Welsh, Exhibit 65, at 10.

<sup>1165</sup> Statement of Brig Gen Welsh, Exhibit 64, at 28-29; statement of the Vice Commandant (1999 to 2000), Exhibit 66 at 10.

<sup>1166</sup> Statement of Brig Gen Welsh, Exhibit 65, at 19-21.

<sup>1167</sup> We found no evidence of a formal delegation of the chair of the Sexual Assault Services Committee to the Vice Commandant, although in practice it was customary prior to implementation of the Instruction and again after Maj Gen Lorenz departed. While it is not improper to delegate this duty to the Vice Commandant, it appears this informal practice became a custom that eventually led to the mistaken belief the Commandant was intentionally excluded from the Sexual Assault Services Committee. Statement of Brig Gen Gilbert, Exhibit 10, at 49-52. In addition to the Commandant serving as the Committee's chairperson, USAFA Instruction 51-201, ¶ 2.8.1.2.1, designated the Commandant as the senior official the Counseling Center must notify when a sexual assault was reported. The same requirement for the Counseling Center to notify the Commandant was also expressly stated in the May 22, 1997 waiver the Academy received from the Surgeon General permitting them to deviate from normal Air Force sexual assault

briefed him that the Vice Commandant served as the Sexual Assault Services Committee chairperson and it was "his program, not mine."<sup>1168</sup> He believed this arrangement was intended to isolate victim support from the command element.<sup>1169</sup> As a result, Brig Gen Gilbert was not involved with the Sexual Assault Services Committee and did not recall receiving any information directly from them.<sup>1170</sup> He did recall receiving some abbreviated information from the Cadet Counseling Center relating to individual reports of sexual assault beginning in early 2003, but he returned the forms to them asking what he was supposed to do with them since they essentially provided him no useful information.<sup>1171</sup> The Victim Advocate Coordinator said she never briefed Brig Gen Gilbert on any sexual assault issues.<sup>1172</sup> Brigadier General Gilbert noted that he was involved in working issues related to specific cases that came to his attention and implemented changes to address gender and character issues, for example, by enhancing the character development education and training programs through the Character Development Center and the 34<sup>th</sup> Education Group.<sup>1173</sup>

Brigadier General Gilbert was absent from the Cadet Wing for most of Academic Year 2002-2003.<sup>1174</sup> He attended CAPSTONE (a six-week course for new General officers) from September 26, 2002 to November 12, 2002.<sup>1175</sup> This appears to be a routine practice as both (then) Brig Gen Lorenz and Brig Gen Welsh attended CAPSTONE during their terms as Commandant. Brigadier General Gilbert left on official temporary duty away from the Academy shortly after he returned from CAPSTONE and then the cadets were away for Thanksgiving and Christmas breaks. Brigadier General Gilbert was on convalescent leave the month of January 2003 due to complications following what he thought would be minor surgery.<sup>1176</sup> The combination of official

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reporting requirements. Temporary Limited Waiver of Air Force Instruction 44-109 Reporting Requirements, Exhibit 129.

<sup>1168</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 51-52.

<sup>1169</sup> *Id.* at 50. Colonel Eskridge, the Vice Commandant from December 2002 to April 2003, said it was tradition for the Vice Commandant to serve as the Sexual Assault Services Committee chairperson because the Vice Commandant is not directly in the chain of command but can provide a link between the sexual assault services system and command. Statement of Col Eskridge, Exhibit 124, at 22.

<sup>1170</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 49-53.

<sup>1171</sup> *Id.* at 47-48. Brigadier General Gilbert said the form contained too little information to be useful to command and he viewed it as a "cover your ass" type document that would permit the Counseling Center to show they notified the Commandant but provided no useful information. *Id.* For examples of the tracking forms see Sexual Assault Tracking Sheets, Exhibit 301.

<sup>1172</sup> Statement of Victim Advocate Coordinator, Exhibit 182, at 30, 32.

<sup>1173</sup> Statement of Brig Gen Gilbert, Exhibit 10, *Id.* at 20-22. He described his direct involvement in six specific sexual assault cases that occurred during his tenure. *Id.* at 109-123. He believed loyalty among cadets was improperly centered on loyalty to fellow cadets rather than higher values, and he attempted to instill a hierarchy based upon loyalty to values, loyalty to the unit's mission, and then loyalty to individuals. *Id.* at 13, 83.

<sup>1174</sup> Brigadier General Gilbert became the Commandant in August 2001. Statement of Brig Gen Gilbert, Exhibit 10, at 6-7. The Fall semester of academic year 2002-2003 began on August 3, 2002 and ended on December 19, 2002. The Spring semester began January 2, 2003. Fall Semester 2002 and Spring Semester 2003 Calendar, Exhibit 287. See also, Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288. Brigadier General Gilbert said that due to CAPSTONE and his medical problem, "I have not seen the cadets a lot this year (academic year 2002-2003)." Statement of Brig Gen Gilbert, Exhibit 10, at 94.

<sup>1175</sup> According to records, Brig Gen Gilbert was away on leave, temporary official duty away from the Academy, or medical convalescent leave 153 of the 615 days, twenty-five percent of the time, he was assigned as the Commandant. In comparison, Brig Gen Welsh was away twenty percent of the time and (then) Brig Gen Lorenz was away fourteen percent of the time when they were the Commandants. Major General Lorenz attended CAPSTONE from February 3, 1997 to March 14, 1997. Brigadier General Welsh attended CAPSTONE from January 31, 2000 to March 10, 2000. See Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288.

<sup>1176</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 94.

duty away from the Academy, Academy holiday periods, and an extended medical absence, meant he was physically unable to have significant involvement during much of this academic year.

USFA Instruction 51-201 does not require the Sexual Assault Services Committee to meet on a regular basis. Instead it provides for meetings to occur on an "as needed" basis.<sup>1177</sup> The frequency of the meetings declined from monthly during the tenure of the chairperson from 1995 to 1998, to quarterly beginning in 2001, to twice a year in 2002. A consequence of the decline in the frequency of the meetings was less information being available to command. For example, Brig Gen Welsh said, "the issues that were raised in that meeting [the Sexual Assault Services Committee] very often were topics of discussion in 'Cops and Robbers' meetings and in the next Senior Staff Meeting."<sup>1178</sup> Likewise, USFA Instruction 51-201 requires the Sexual Assault Services Committee to provide biannual reports on sexual assault issues to the Superintendent and other senior leaders,<sup>1179</sup> yet as noted, neither the Superintendent, Lt Gen Dallager nor the Commandant, Brig Gen Gilbert recalled receiving such reports and the Working Group could find no record of such reports prior to the April 2002 briefing.<sup>1180</sup>

Lieutenant General Dallager said he viewed the Sexual Assault Services Committee as the "fusion point" for the Academy's sexual assault services program and his view is consistent with the Committee's charter in USFA Instruction 51-201.<sup>1181</sup> A factor that appeared to hinder melding the Committee into an effective, integrated group was the frequency with which its leadership changed. During the five and a half year period Lt Gen Oelstrom and Lt Gen Dallager were the Superintendents, there were six Vice Commandants,<sup>1182</sup> and four Chiefs of Sexual Assault Services in the Cadet Counseling Center.<sup>1183</sup> In Lt Gen Dallager's thirty-three months as Superintendent, there were four different Vice Commandants and three different Chiefs of Sexual Assault Services.<sup>1184</sup> Changing the Sexual Assault Services Committee's principal leader and its

<sup>1177</sup> USFA Instruction 51-201, ¶ 2.4, April 18, 2000, Exhibit 55.

<sup>1178</sup> Statement of Brig Gen Welsh, Exhibit 65, at 23.

<sup>1179</sup> The original version of the instruction required the Sexual Assault Services Committee to submit quarterly reports to the Superintendent. USFA Instruction 51-201, ¶ 2.4 (July 15, 1997) Exhibit 86. The requirement for reports to the Superintendent decreased to twice per year when the instruction was revised less than three years later.

<sup>1180</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2.

<sup>1181</sup> Statement of Lt Gen Dallager, Exhibit 71, at 49; USFA Instruction 51-201, ¶ 2.4, Exhibit 55.

<sup>1182</sup> Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 5-6, 17; Statement of the Vice Commandant (1998 to 1999), Exhibit 51, at 5; Statement of the Vice Commandant (1999 to 2000), Exhibit 66, at 3-4; Statement of the Director of Admissions, Exhibit 289, at 1 (Note: The Director of Admissions served previously as the Vice Commandant. In his statement concerning his tenure as the Vice Commandant he initially said he served in that role until 2001, but later said it was until 2000. In his statement concerning his tenure as the Director of Admissions he said he moved to that job in 2000. The person he replaced as Director of Admissions retired in September 2000. That and other statements show his tenure as Vice Commandant ended in 2000); Sexual Assault Services Committee Meeting Minutes for September 13, 2000, Exhibit 70; Statement of the Vice Commandant (2001 to 2002), Exhibit 59, at 3; Statement of Col Eskridge, Exhibit 124, at 4.

<sup>1183</sup> Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 1; Statement of Chief of Sexual Assault Services (1999 to 2001), Exhibit 82, at 1; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1; and Statement of Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 1.

<sup>1184</sup> Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 3; Statement of Vice Commandant (2000 to 2001), Exhibit 261, at 2; Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 3; Statement of Col Eskridge, Exhibit 124, at 4. Statement of Chief of Sexual Assault Services from 1999 to 2001, Exhibit 82, at 1; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1; Statement of Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 1. The Chief of Sexual Assault Services from 2001 to 2002 was on maternity leave in May 2002 and left the Academy in July 2002. Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1-2. She was out frequently due to medical difficulties. Statement of Victim Advocate Coordinator, Exhibit 182, at 30. Her

primary action officer so frequently apparently, negatively impacted the ability of these individuals to assimilate the intricacies of the Academy's unique sexual assault program and fuse the separate pieces into an effective, responsive operation.

As noted earlier, the Academy never fully complied with the express terms of USAFA Instruction 51-201 with respect to the Sexual Assault Services Committee. It was apparent from Brig Gen Gilbert's statement, "it was his (the Vice Commandant's) program, not mine,"<sup>1185</sup> that he believed the Vice Commandant was responsible for the Sexual Assault Services Committee and he was by design excluded from the process.<sup>1186</sup> This perceived exclusion frustrated him and he complained to Lt Gen Dallager about the lack of information available to him as a commander and his view that "the system was broken."<sup>1187</sup> As a result, Brig Gen Gilbert proposed moving the Department of Behavioral Sciences and Leadership from the Dean of the Faculty to the Training Wing or, in the alternative, move the Cadet Counseling Center from the Department of Behavioral Sciences and Leadership to the 10<sup>th</sup> Air Base Wing in order to provide command better access to information on sexual assaults.<sup>1188</sup> Lieutenant General Dallager expressed some reservations, but told him he could discuss it with the Dean of the Faculty.<sup>1189</sup> The Dean did not concur with the proposal and Lt Gen Dallager did not support Brig Gen Gilbert's request.<sup>1190</sup> (Note: The *Agenda for Change* makes one of the changes Brig Gen Gilbert advocated.)

### B. Shift of Command Focus

During recent years, a number of significant events occurred in succession, both internal and external to the Academy, which over time diverted command's attention away from sexual assault issues.<sup>1191</sup> Brigadier General Wagie has been involved in the Academy's efforts to address sexual assault issues over the past decade.<sup>1192</sup> He said Lt Gen Hosmer and Lt Gen Stein "really pushed" working sexual assault issues in the 1993 to 1996 period, but then a series of events — aircraft accidents at the Academy, honor issues, the September 11, 2001 terrorist attacks — caused some shift in focus to other areas.<sup>1193</sup>

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replacement did not arrive until several months later leaving the position vacant for about five months. Statement of Victim Advocate Coordinator, Exhibit 50, at 125 and 137.

<sup>1185</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 52.

<sup>1186</sup> *Id.*

<sup>1187</sup> *Id.* at 53.

<sup>1188</sup> *Id.* at 53-55.

<sup>1189</sup> Statement of Lt Gen Dallager, Exhibit 71, at 141. Lieutenant General Dallager acknowledged Brig Gen Gilbert expressed frustration with the lack of information he received and recalled his proposal to move the Counseling Center under his supervision. Lieutenant General Dallager said he discussed the proposal with some prior Superintendents and others, and the consensus was moving the Center under the Commandant would undermine cadet confidence in confidentiality. *Id.*

<sup>1190</sup> Brigadier General Gilbert discussed the proposal with the Dean of the Faculty and the Head of the Department of Behavioral Sciences and Leadership, and they did not agree with the proposed move. Statement of Brig Gen Gilbert, Exhibit 10, at 54-55. Major General Lorenz attempted to have the Counseling Center moved back to the Training Wing when he was the Commandant and he, too, was unsuccessful. Statement of Maj Gen Lorenz, Exhibit 52, at 31.

<sup>1191</sup> Statement of Brig Gen Wagie, Exhibit 198, at 111-113.

<sup>1192</sup> Brigadier General Wagie, a 1972 Academy graduate, was involved in creating the Center for Character Development in 1993 at the direction of Lt Gen Hosmer, serving as its Director from 1994 to 1996, and was at the meeting Lt Gen Stein held in 1997 with members of the Air Staff to obtain a waiver to allow the Academy to implement the unique sexual assault response process currently outlined in USAFA Instruction 51-201. *Id.* at 2-4, 44-45 and 111-112.

<sup>1193</sup> *Id.* at 112-113. He said: "But I think looking back, we built some momentum (in addressing sexual assault issues) and then I think we just kind of leveled off and said, 'I think things are going pretty well.' Then we build some

Brigadier General Gilbert described the impact of the September 11, 2001 terrorist attacks on the Academy. He said the Academy is a highly symbolic target and was designed to be open and accessible, which made it vulnerable. Following the attacks, cadets were assigned to security details to protect the cadet area and checkpoints had to be established. Privately owned vehicles were ordered out of the cadet area, which eliminated 1,500 parking spaces. Union problems arose because of the tightened security.<sup>1194</sup> He described a number of other issues that occupied large portions of his time, including a major drug investigation that led to several cadets facing court-martial, unprofessional conduct by members of the Academy's parachuting team, safety issues related to twenty to thirty thousand glider sorties and fifteen to twenty thousand parachute jumps per year, problems with food services following a freeze on filling civilian personnel vacancies, and the disruption caused by an A-76 reorganization that resulted in the 34<sup>th</sup> Support Group moving from the Training Wing to the 10<sup>th</sup> Air Base Wing.<sup>1195</sup> He also described efforts he took to address issues indirectly related to sexual assault, such as altering the character education program to ensure each class had character seminars to support their classroom character education and enhancing the Human Relations Officer program to ensure top quality cadets were chosen for those positions.<sup>1196</sup> Lieutenant General Dallager also described competing demands placed on his time, which did not allow him to focus on sexual assault issues.<sup>1197</sup>

A declining manpower environment appeared to be an issue that was accentuated with an event like September 11<sup>th</sup> that placed unexpected demands on time, resources and manpower. Colonel Eskridge said one reason problems with the sexual assault portion of the cadet Social Climate Survey were not remedied was not having sufficient manpower to devote to the task.<sup>1198</sup> Likewise, the Deputy Commander of the 34<sup>th</sup> Training Group acknowledged that data exists that could allow someone to track disciplinary trends, like alcohol related incidents, but she added, "We could do that if we had more manpower. Right now our manpower just does not allow us to do that."<sup>1199</sup> She said that as of March 2003 the Training Group is manned at about ninety-two to ninety-four percent of its authorized manpower allocation.<sup>1200</sup>

Based on our interviews, it appears that a poor working relationship and lack of communication among the Academy's senior leadership became impediments to their ability to work together and this appeared to extend to their ability to provide a coordinated, integrated response to sexual assaults. Several expressed their frustration including Brig Gen Gilbert.<sup>1201</sup> He

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momentum and we level off. I think we...have been distracted by other events, Honor issues, aircraft accidents, 9-11 issues, security issues and in some ways haven't kept eyeball to eyeball with the cadets." *Id.*

<sup>1194</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 16. Cadets worked security details until they left for Christmas break in mid-December 2001. The union problems are ongoing. *Id.*

<sup>1195</sup> Memorandum from Brig Gen Gilbert, March 25, 2003, Exhibit 290.

<sup>1196</sup> *Id.*

<sup>1197</sup> Statement of Lt Gen Dallager, Exhibit 71, at 25.

<sup>1198</sup> Statement of Col Eskridge, Exhibit 124, at 12.

<sup>1199</sup> Statement of the Deputy Commander, 34<sup>th</sup> Training Group, Exhibit 264, at 34-35.

<sup>1200</sup> *Id.* at 35.

<sup>1201</sup> The Athletic Director expressed frustration in his dealings with Brig Gen Gilbert. He believed Brig Gen Gilbert "has made up his mind where we're going to go with the Academy" and he did not take the views of the Dean of the Faculty or the Athletic Director into consideration. Statement of Athletic Director, Exhibit 199, at 30. The Athletic Director expressed frustration with the lack of coordination by Brig Gen Gilbert and the Training Wing staff, and said "we've always before coordinated with each other." *Id.* at 34. He believed the Training Wing disregarded comments provided from other elements. *Id.* at 29. The Athletic Director had been in his current position for seven years. *Id.* at 4. The Dean of the Faculty said, "I think at senior levels, there had been a lot less communication over the last year, two years.... We don't have the kind of interaction socially, or the kind of, 'let me bounce this off of you' kind of

came to the Academy with what he viewed as clear "marching orders" from the Chief of Staff of the Air Force to restore discipline and standards within the Cadet Wing.<sup>1202</sup> General (ret) Michael E. Ryan, the Chief of Staff of the Air Force at the time, confirmed that he met with Brig Gen Gilbert prior to his departure for the Academy and told him, "I thought the discipline at the Air Force Academy was not up to the standard that should be expected,"<sup>1203</sup> and "I wanted to pay particular attention to the fact that this was a military institution as well as an academic institution."<sup>1204</sup> Brigadier General Gilbert assumed the Chief of Staff conveyed the same message to Lt Gen Dallager since the Superintendent reports to the Chief of Staff.<sup>1205</sup> Lieutenant General Dallager said General Ryan did not tell him that he was sending Brig Gen Gilbert to the Academy with a mandate to restore discipline and General Ryan did not recall talking with Lt Gen Dallager at that time, but he did recall expressing similar concerns to Lt Gen Dallager upon his appointment as Superintendent.<sup>1206</sup> When Brig Gen Gilbert met resistance in trying to implement changes to carry out the Chief of Staff's guidance, he was frustrated. He said, I was "trying to act on the charter that I had been given by General Ryan and where I felt the Chief of Staff had told me he had wanted me to take the Cadet Wing. There was a consistent resistance from the other mission elements."<sup>1207</sup>

In January 2003, Lt Gen Dallager decided to convene a "family summit" with the senior staff in an effort to resolve the tension among the mission elements, which he described as being "as bad as I've seen it in the time that I've been here."<sup>1208</sup> He believed the primary source of the friction was the Training Wing.<sup>1209</sup> Lt Gen Dallager commented further, "The necessity of working across mission elements, as we've described, is critical here, because the training wing doesn't own all the resources."<sup>1210</sup> This lack of cooperation appeared to have a direct impact on the Sexual Assault Services Committee, which consists of representatives from three of the four mission elements and members of the Superintendent's staff where cooperation and communication are paramount to the Committee's effectiveness.<sup>1211</sup> The Vice Commandant from 2001 to 2002 and a

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discussions." Statement of Brig Gen Wagie, Exhibit 198, at 79. The 10<sup>th</sup> Air Base Wing Commander was the most recent addition to the senior staff, having arrived in late October 2002. He had no direct complaints, however, the Security Forces Commander complained to him about problems getting information out of the Training Wing and a lack of access to the Cadet Wing. Statement of 10<sup>th</sup> Air Base Wing Commander, Exhibit 257, at 2. The 10<sup>th</sup> Air Base Wing Commander said he detected friction between Brig Gen Gilbert and the Athletic Director in the senior staff meetings and he described their relationship as "icy." *Id.*

<sup>1202</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 7-8.

<sup>1203</sup> Statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

<sup>1204</sup> *Id.* at 3.

<sup>1205</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 12-13.

<sup>1206</sup> Statement of Lt Gen Dallager, Exhibit 71, at 106; Statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

<sup>1207</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 87. In Brig Gen Gilbert's opinion, part of the problem was the lack of a clear vision of what the Academy's mission was and where it was headed. *Id.* at 86-87.

<sup>1208</sup> Statement of Lt Gen Dallager, Exhibit 71, at 109. The meeting took place at Brig Gen Gilbert's quarters where he was on convalescent leave following surgery. In Brig Gen Gilbert's view, Lt Gen Dallager and the elements representatives spent several hours telling him "I wasn't playing well in the sand box." Statement of Brig Gen Gilbert, Exhibit 10, at 87. Some thought the meeting was productive. See statement of 10<sup>th</sup> Air Base Wing Commander, Exhibit 257, at 3. Others thought Brig Gen Gilbert was defensive and the meeting did not improve the situation. See Statement of Athletic Director, Exhibit 199, at 37. The meeting lasted about three hours. *Id.* at 35.

<sup>1209</sup> Statement of Lt Gen Dallager, Exhibit 71, at 119.

<sup>1210</sup> Statement of Lt Gen Dallager, Exhibit 71, at 122.

<sup>1211</sup> USAFA Instruction 51-201, ¶ 2.4, Exhibit 55. See also, Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17-18. He explained that the Dean of the Faculty has overall responsibility for the Sexual Assault Services Committee. The Commandant is responsible for character development. The Training Group Commander is responsible for cadet discipline and cadet military training. Legal support for dealing with criminal conduct and medical care is provided by the 10<sup>th</sup> Air Base Wing. Legal services for cadet conduct that could result in disenrollment

former Sexual Assault Services Committee chairperson, said, "It took tremendous leadership and coordination to bring these various blocks together into a coherent committee."<sup>1212</sup> It was during this period of senior staff discord that the Sexual Assault Services Committee went nearly nine months without meeting.<sup>1213</sup>

### C. Training Wing Discipline

Based on our interviews, since the arrival of Brig Gen Gilbert in August 2001, and particularly since the arrival of Col Slavec in May 2002, there appeared to be a perception among cadets, faculty and leadership that the imposition of punishment upon cadets increased significantly. Lieutenant General Dallager said he received feedback from a variety of sources, including cadets and AOCs, that "in trying to put the 'M' back in military, the environment has been — I don't say this flippantly — it's been tough love without the love portion and that it's a bit of the leadership by Form 10 environment...."<sup>1214</sup> Brigadier General Gilbert recognized the perception as well. He initiated steps soon after his arrival to enhance discipline and standards, and he acknowledged that initially punishments had increased. He explained, however, that in his view he did not change the standards, he enforced existing standards that had been allowed to slip over time.<sup>1215</sup> He also said that a perception arose after Col Slavec took command that "discipline was overly draconian, and not fair...."<sup>1216</sup>

Based on the Working Group's interviews, the perception of a strict discipline environment appears to have been present throughout the Academy. Cadets interviewed, both male and female, said they believed senior leadership's focus was on discipline.<sup>1217</sup> A female cadet thought there was a punishment mentality at the Academy. She described hearing Colonel Slavec give a terse response to a question at an "open door meeting" with cadets, which led her to question, "Why would anyone want to report to the chain of command about a sexual assault when you get this kind of reaction when you are asking about new regulations?"<sup>1218</sup> A faculty member expressed his view that the Training Wing and Training Group believed the way to fix a problem was to keep increasing the punishment until the problem stopped, and cadets, Military Training Leaders (MTL), and AOCs were in fear.<sup>1219</sup> Cadets interviewed related an apparently widespread belief that reporting offenses to Academy officials was likely to result in disciplinary action against the cadet who came forward, if infractions by that cadet were involved, with a negative impact on the cadet's Academy career.<sup>1220</sup> A male MTL said the severity of punishment increased significantly over the

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is provided by Headquarters USAFA. He said, "So, environmentally, as far as how this thing is structured, it's very bureaucratic." *Id.* at 18.

<sup>1212</sup> *Id.* at 20.

<sup>1213</sup> See Sexual Assault Services Committee Meeting Minutes for May 2, 2002 and January 31, 2003, Exhibits 80 and 81. See also E-mail from Renee Trindle to Dr. James G. Roche, January 2, 2003, Exhibit 1.

<sup>1214</sup> Statement of Lt Gen Dallager, Exhibit 71, at 84.

<sup>1215</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 68.

<sup>1216</sup> *Id.* at 74.

<sup>1217</sup> Memorandum for Record, Interview with Female Third-Class cadets, Exhibit 291, at 2; Memorandum for Record, Meeting with Male First-Class cadets, Exhibit 292, at 1.

<sup>1218</sup> Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 291, at 1-2.

<sup>1219</sup> Memorandum for Record, Interview with Lt Col, Faculty Member, Exhibit 225, at 2-3.

<sup>1220</sup> For cadet perceptions, see Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148. She described what she believed was excessive punishment for her infractions disclosed during the investigation of an alleged rape of one of her friends. As a result, she would not recommend female cadets report sexual assaults or anything else to Academy officials. She opined that when a cadet comes to the attention of the Academy's leadership and is considered a troublemaker, they are subjected to close scrutiny and can never recover. *Id.* See also,

past year and, while no one ever told him why, he suspected it was an effort to address too much leniency under the previous leadership. He said, prior to January 2003, women who reported sexual assaults were punished for cadet infractions they committed and, while the policy had now been changed, he thought female cadets were still afraid to come forward.<sup>1221</sup> Various individuals reported a lack of rapport between Col Slavec and the AOCs, MTLs, and cadets.<sup>1222</sup> An AOC believed cadets would not report offenses because they were afraid of punishment.<sup>1223</sup>

The belief that punishment increased significantly after the arrival of Brig Gen Gilbert and Col Slavec was more perception than reality. An analysis of the more serious cadet disciplinary actions (Class C and D "hits")<sup>1224</sup> over the past five academic years shows the total number of these actions per year during Brig Gen Gilbert's tenure were generally consistent with those under his predecessor, Brig Gen Welsh, and the last year of Brig Gen Welsh's predecessor, (then) Brig Gen Lorenz.<sup>1225</sup> During Brig Gen Welsh's final year as Commandant, the 2000-2001 academic year, there were 951 cadet disciplinary actions, the highest in the five-year period. The average number of actions during the 1998 through 2001 academic year period in which (then) Brig Gen Lorenz and Brig Gen Welsh were the Commandants was 639 per year.<sup>1226</sup> There were 600 actions in Brig Gen Gilbert's first year as Commandant and projected to be 378 his second year.<sup>1227</sup> That is an average of 489 actions per year, which is one-fourth below the average for the preceding three-year period. By this measure, the belief that more cadets were being punished (at least regarding the upper range of punishments) during Brig Gen Gilbert's tenure is not supported by the data. Interestingly, the projected total for academic year 2002-2003, the year in which Col Slavec served as Commander of the 34<sup>th</sup> Training Group, is the lowest of all five years.<sup>1228</sup>

What likely caused the perception of a harsher disciplinary environment is the amount of punishment imposed when action was taken. Annual averages for restrictions, demerits and tours for Class C and D "hits" reached the highest levels of the five-year period during the last few

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Memorandum for Record, Group Interview with Female Third-Class cadets, Exhibit 56 (would not report sexual assault because leadership does not support victims and in one case the victim was punished while nothing happened to her assailant); Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24 (there are negative repercussions for cadets that report sexual assaults, including "hits" for their actions and ostracism by fellow cadets); Summarized Statement of Female First-Class cadet, Exhibit 19 (this CASIE representative said some cadets believe that if they inform leadership about an incident then they will get themselves into trouble). *But see* discussion in text that follows.

<sup>1221</sup> Statement of Male Military Training Leader, Exhibit 133, at 3.

<sup>1222</sup> Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 291, at 1-2; Statement of 34<sup>th</sup> Training Wing Superintendent, Exhibit 54, at 4.

<sup>1223</sup> Statement of Male AOC, Exhibit 36, at 6.

<sup>1224</sup> The Working Group was unable to locate Academy punishment trend analyses over time and prepared one using best available data going back five years. *See* Trend Analysis of Discipline Data, Exhibit 147 for the complete analysis. The data are for class C and D cadet infractions only. Cadet disciplinary punishments are divided into four categories, A through D, with an increasing range of severity. Data was not available for the less significant (Class A and B "hits") cadet infractions. Class C and D infractions are the two most serious classes of infractions handled through the cadet disciplinary system. Punishment can include confinement (a period where the cadet must stay in his or her dormitory room; one confinement equals one hour and fifty minutes); restriction (prohibiting the cadet from leaving the cadet area of the Academy; measured in days); tours (cadet is required to march with a rifle; one tour equals one hour of marching); and demerits (a reference mark of conduct or deportment; a cadet accumulating 100 demerits in a moving six-month period may be considered for elimination from the Academy). *See* AF Cadet Wing Instruction 51-201, Discipline and Probation System, Exhibit 265; Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288.

<sup>1225</sup> Trend Analysis of Discipline Data, Exhibit 147. Complete data was only available from 1998 forward. *Id.*

<sup>1226</sup> *Id.* There were 1,916 actions in the three-year period for an average of 639 per year.

<sup>1227</sup> *Id.* The number for the second year is a projection based upon data as of February 20, 2003.

<sup>1228</sup> *Id.*

years.<sup>1229</sup> Taken as a whole, however, the amount of punishment imposed under Brig Gen Gilbert was not disproportionate compared with prior Commandants. The amount of confinement and restriction in Brig Gen Gilbert's first year was about the same as the prior year under Brig Gen Welsh.<sup>1230</sup> In his second year, averages for confinement and restriction dropped to the lowest levels since (then) Brig Gen Lorenz was the Commandant in the 1998-1999 academic year. Demerits and tours imposed in Brig Gen Gilbert's first year were comparable to the two years in which Brig Gen Welsh served as Commandant and significantly below the level in (then) Brig Gen Lorenz's final year.<sup>1231</sup> On the other hand, the average amount of demerits and tours awarded in Brig Gen Gilbert's second year were significantly higher than his first year and significantly higher than both years under Brig Gen Welsh. They were not, however, inconsistent with the average for demerits and tours in (then) Brig Gen Lorenz's final year.<sup>1232</sup>

These comparisons suggest that the increase in the average period of restriction in Brig Gen Gilbert's first year and the increase in demerits and tours in his second year created a perception that punishment had become disproportionate relative to prior leadership. The Academy's most senior cadets at the time, the Class of 2003, only had the preceding period under Brig Gen Welsh as a basis for comparison, and by comparison it would have appeared to be a substantial increase in punishment. Despite the fact that substantially fewer cadets received punishment, the increase in the average amount of demerits and tours awarded as punishment compared with Brig Gen Welsh's era could have led many to believe the Training Wing and Training Group followed "leadership by Form 10."<sup>1233</sup>

Notwithstanding the data, those interviewed by the Working Group perceived a harsh disciplinary environment, which, coupled with the widely held view that the leadership of the command element was stern and unapproachable, led some cadets to believe it may not have been in their best interest to report misconduct for fear of bringing punishment upon themselves. Many MTLs, AOCs, and faculty members held the same belief, which provided a disincentive for them to foster an environment that would lead cadets to believe they should report infractions to command. This coupled with other factors, including fear of peer reprisal, led to an environment that may have deterred the reporting of incidents of sexual assault.<sup>1234</sup>

#### *D. Recent Data Available to Command*

Based on the information obtained by the Working Group, during the last few years Academy leadership was not regularly briefed by elements of the Academy staff on issues pertaining to incidents of sexual assault. The Chief of Sexual Assault Services briefed Lt Gen

<sup>1229</sup> *Id.* Restrictions averaged 7.14 days in Brig Gen Gilbert's first year. The next highest average was 4.98 days in Brig Gen Welsh's final year. Demerits averaged forty-seven per punishment imposed during Brig Gen Gilbert's second year. The next highest average was forty-four demerits in (then) Brig Gen Lorenz's final year. Tours averaged forty-two per punishment imposed in Brig Gen Gilbert's second year. The next highest average was forty in (then) Brig Gen Lorenz's final year. The highest average for confinements was 6.19 days during Brig Gen Welsh's final year. The average was 6.14 in Brig Gen Gilbert's first year and 3.32 in his second year.

<sup>1230</sup> *Id.*

<sup>1231</sup> *Id.*

<sup>1232</sup> *Id.*

<sup>1233</sup> See statement of Lt Gen Dallager, Exhibit 71, at 84.

<sup>1234</sup> Lieutenant General Dallager believed the perception that punishment had increased acted as a deterrent to cadets reporting sexual assaults. Statement of Lt Gen Dallager, Exhibit 71, at 90-91. See also Social Climate Surveys, this Report, Section IV.A., in which the fear of reprisal for reporting sexual harassment in most years exceeded 70%. But, there were a number of indicators that reports of sexual assault were actually increasing. See this Report, Section IV.D

Dallager, Brig Gen Gilbert, Brig Gen Wagie and other senior leaders, in April 2002.<sup>1235</sup> She presented a slide showing the number of sexual assaults reported to the Cadet Counseling Center in each academic year from 1985 through 2002.<sup>1236</sup> The slide showed twenty-three reported sexual assaults in the 2001-2002 academic year, the highest number of any year in the seventeen-year period. It reflected an increase from eight reports of sexual assault per year in both the 1999-2000 and 2000-2001 academic years.<sup>1237</sup> Lt Gen Dallager commented that this could be taken in a negative manner.<sup>1238</sup> The Chief of Sexual Assault Services did not interpret this as a negative statement, and she agreed the data could easily be misconstrued.<sup>1239</sup> She interpreted the data as a positive indication that cadets had confidence in the Academy's sexual assault services program and were coming forward in greater numbers, although in her interview, she acknowledged it might also represent an increase in the number of sexual assaults taking place.<sup>1240</sup> Lieutenant General Dallager was concerned whether the increase in reporting meant more assaults were occurring or just reflected more willingness by victims to come forward, as suggested, and he was frustrated with the Cadet Counseling Center's inability to tell him what the increased reports represented. When asked if the Cadet Counseling Center had ever been able to answer his question, Lt Gen Dallager said, "No."<sup>1241</sup>

Lieutenant General Dallager met with the Director of the Cadet Counseling Center and the Director of the Center for Character Development on July 3, 2002 to discuss an issue related to sexual assaults.<sup>1242</sup> At the end of the meeting, Lt Gen Dallager said he wanted to review the 2002 cadet Social Climate Survey data, especially the portion pertaining to sexual assaults, data the staff had not provided to command.<sup>1243</sup> The Victim Advocate Coordinator, the Chief of the Human Relations Division at the Center for Character Development, and the CASIE Program Manager joined the group at Lt Gen Dallager's office a short time later.<sup>1244</sup> They discussed the 2002 survey results, including the numbers reported in the sexual assault portion of the survey. Eighty cadets (out of 1,948 who responded) said they had been sexually assaulted while they were cadets at the Academy and a substantial majority said they never reported the incident.<sup>1245</sup> The validity of the data was subsequently questioned.<sup>1246</sup> Lieutenant General Dallager said he wanted more information, specifically trend data and the results of the surveys from prior years, to get a better understanding of the magnitude of the problem.<sup>1247</sup>

<sup>1235</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2-3; Statement of Victim Advocate Coordinator, Exhibit 50, at 31, 62; Statement of Director, Cadet Counseling Center, Exhibit 47, at 10-11.

<sup>1236</sup> See Briefing Slides, Sexual Assault Services, slide 4, Exhibit 85. Note: This was only one source of sexual assault reports as cadet survey data was also available. See this Report, Section III.I., Social Climate Surveys.

<sup>1237</sup> See Briefing Slides, Sexual Assault Services, slide 4, Exhibit 85.

<sup>1238</sup> Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 3.

<sup>1239</sup> *Id.*

<sup>1240</sup> *Id.*

<sup>1241</sup> Statement of Lt Gen Dallager, Exhibit 71, at 142.

<sup>1242</sup> Statement of the Director, Cadet Counseling Center, Exhibit 47, at 11.

<sup>1243</sup> *Id.* at 11-12, 17, 20-23.

<sup>1244</sup> *Id.* at 11.

<sup>1245</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 3). Of the eighty cadets who said they had been assaulted, 87.5 percent said they did not report the incident. *Id.* Note: These overall numbers (eighty cadets) do not distinguish between Academy related assaults and other assaults.

<sup>1246</sup> Statement of the Director, Cadet Counseling Center, Exhibit 47, at 13-14.

<sup>1247</sup> *Id.* at 13, and Statement of Victim Advocate Coordinator, Exhibit 182, at 37.

In an effort to address Lt Gen Dallager's request for trend data, the Director of the Cadet Counseling Center<sup>1248</sup> reviewed the results of the sexual assault portions of the surveys conducted in 1998, 2000, 2001 and 2002, and discussed them with the Head of the Department of Behavioral Sciences and Leadership and her Deputy.<sup>1249</sup> This was the first in-depth examination of the 1998, 2000 and 2001 data. The examination caused the Director of the Cadet Counseling Center to question the validity of the survey data for several reasons, including the low rate of cadet participation in some years<sup>1250</sup> and some obvious inconsistent responses.<sup>1251</sup> He discussed his concerns with the chairperson for the Department of Behavioral Sciences and Leadership and a former Director of the Cadet Counseling Center. Collectively they decided the results were not valid.<sup>1252</sup> The Director of the Cadet Counseling Center said he did not provide trend data or data from the prior surveys to Lt Gen Dallager because he did not believe they were valid and because he did not believe Lt Gen Dallager specifically tasked him to provide such a response.<sup>1253</sup>

Similarly, Brig Gen Gilbert did not recall seeing any data from the sexual assault portion of the Social Climate Surveys.<sup>1254</sup> We were unable to find any indication that sexual assault survey data collected in recent years was conveyed to the Commandant. Likewise, the July 3, 2002 meeting in the Superintendent's office that included a discussion about the 2002 sexual assault survey results was the only instance we found where the Superintendent received any sexual assault survey data.<sup>1255</sup>

<sup>1248</sup> The Center for Character Development has overall responsibility for managing the cadet social climate survey, but they forward the data from the sexual assault portion to the Counseling Center once the results are compiled. It was understood that the Counseling Center "owned" the sexual assault survey data. Statement of Chief of Sexual Assault Services (1999 to 2001), Exhibit 82, at 1; and Statement of the Director, Center for Character Development (1996 to 2002), Exhibit 72, at 25 (the Cadet Counseling Center was part of the Center for Character Development until 1996 when it was realigned under the Department of Behavioral Sciences and Leadership. Responsibility for the sexual assault component of the cadet social climate survey transferred from the Center for Character Development when the Counseling Center was realigned.).

<sup>1249</sup> Statement of the Director, Cadet Counseling Center, Exhibit 47, at 18, 20.

<sup>1250</sup> For example, only 314 of the more than 4,000 cadets participated in the 2000 survey. Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1999-2000, cover memorandum).

<sup>1251</sup> Statement of Director, Cadet Counseling Center, Exhibit 47, at 16. As an example of clearly inconsistent responses, the Director said a number of the male cadets that said they were victims of sexual assault indicated the manner in which they were assaulted was vaginal penetration. *Id.*

<sup>1252</sup> *Id.* at 20. *But see*, this Report, Section III.I., Social Climate Surveys, noting the data was not invalid although problematic.

<sup>1253</sup> Statement of Director, Cadet Counseling Center, Exhibit 47, at 17-21. However, earlier he said, "Well, the tasker was given to the counseling center, so it would have been me as far as responsibility." *Id.* at 18. The Director of the Counseling Center said he did not believe anyone in the Academy's senior leadership was ever briefed on sexual assault survey data prior to July 3, 2002. *Id.* at 23. The Working Group's review tends to confirm his belief. The only indication that senior leadership was briefed on sexual assault survey data was a December 1998 briefing to the senior staff, including Lt Gen Oelstrom (or possibly his executive officer on his behalf) and (then) Brig Gen Lorenz, by the Chief of Sexual Assault Services. Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2. This suggests the Commandants (Brig Gen Welsh throughout his tenure (1999 to 2001) and Brig Gen Gilbert from August 2001 until the current issues arose in early 2003) were not aware of any sexual assault survey data. Likewise, Lt Gen Oelstrom did not receive sexual assault survey data in the final eighteen months of his tenure and Lt Gen Dallager did not receive any in the first twenty-five months of his tenure. It is unlikely Lt Gen Dallager would have received sexual assault survey data then had he not specifically requested it at the July 3, 2002 meeting. According to the Director of the Counseling Center, the sexual assault survey data was not used for anything and he did not know what the rationale was for collecting the information. Statement of Director, Cadet Counseling Center, Exhibit 33, at 14.

<sup>1254</sup> Statement of Brig Gen Gilbert, Exhibit 10, at 44-45.

<sup>1255</sup> The results of the 1997 sexual assault survey were briefed in a December 1998 meeting, but the participants were uncertain whether Lt Gen Oelstrom was present. Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2, and statement of Vice Commandant (1998 to 1999), Exhibit 51, at 23. The Victim Advocate Coordinator,

Lieutenant General Dallager developed concerns in the summer of 2002 that the climate at the Academy "was not as good as it should be" based upon information he received, anecdotal observations and conversations with cadets.<sup>1256</sup> As a result, he briefed all of the cadets and permanent party members that summer and stressed to them that character development was priority one, and he highlighted his concern about unprofessional conduct.<sup>1257</sup> His concern over the extent of sexual assault was heightened around that time and he became frustrated with his inability to get substantive answers to his questions.<sup>1258</sup> Although he thought that the Academy had a pretty good sexual assault program, in interviews he identified areas requiring attention. He observed that he did not receive regular reports from the Sexual Assault Services Committee, that not enough information came to command on individual cases, and investigative processes were not well connected. He could only recall receiving report forms on individual sexual assault incidents on two occasions in three years.<sup>1259</sup> He said the Sexual Assault Services Committee had "not worked the issues I think it's intended to work."<sup>1260</sup> He turned to the Center for Character Development to address sexual harassment and the Cadet Counseling Center to address sexual assault, but when he inquired of each group to determine if matters were better or worse, he got no definitive reply.<sup>1261</sup>

According to Lt Gen Dallager, the Center for Character Development told him that the sexual harassment portion of the cadet climate survey they considered "not to be overly valid."<sup>1262</sup> Lieutenant General Dallager thus directed "the experts" to develop a valid survey instrument.<sup>1263</sup>

As noted in the Social Climate Survey section of this Report, while considered of questionable validity by some at the Academy, the survey results showed, of the cadets who responded, a significant number said they had been sexually assaulted since coming to the Academy.<sup>1264</sup> There were 167 affirmative responses in the 2001 survey,<sup>1265</sup> and eighty affirmative responses in the 2002 survey.<sup>1266</sup> Lieutenant General Dallager and Brig Gen Gilbert said they did not recall that data being presented to them, but both agreed the numbers were significant and would have been cause for concern had they known the results.<sup>1267</sup>

The Cadet Counseling Center, at the direction of Lt Gen Dallager, conducted a survey in January 2003 to measure cadets' perceptions on the services available for sexual assault victims at

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however, recalled Lt Gen Oelstrom being present at the briefing and said it was her only clear recollection of Lt Gen Oelstrom. Statement of Victim Advocate Coordinator, Exhibit 182, at 21-22. This was the only other reference to sexual assault survey data being presented to a Superintendent.

<sup>1256</sup> Statement of Lt Gen Dallager, Exhibit 71, at 16.

<sup>1257</sup> *Id.* at 47.

<sup>1258</sup> *Id.* at 48.

<sup>1259</sup> *Id.* at 28-29, 49, 63, 75.

<sup>1260</sup> *Id.* at 49.

<sup>1261</sup> *Id.* at 50.

<sup>1262</sup> *Id.* at 34. That observation was first raised in the Fall of 2002.

<sup>1263</sup> *Id.* at 39-40. The group formed in the Fall of 2002. The next meeting is scheduled for May 2003.

<sup>1264</sup> The wording of the questions changed over time and was such that not all of the reported assaults are necessarily Academy-related sexual assaults. For further discussion, see this Report, Section III.I., Social Climate Surveys.

<sup>1265</sup> Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 4).

<sup>1266</sup> *Id.*

<sup>1267</sup> Statement of Lt Gen Dallager, Exhibit 71, at 45-46 and Statement of Brig Gen Gilbert, Exhibit 10, at 45-46. As discussed earlier, Lt Gen Dallager was briefed on the 2002 results during the meeting in his office on July 3, 2002, but was not briefed on the 2001 results.

the Academy.<sup>1268</sup> While some of the data was encouraging, with ninety-five percent saying they knew about the services available through CASIE, other data was discouraging. About one-third of the female cadet respondents expressed a lack of confidence in the Academy's sexual assault treatment program. The lack of confidence was highest among female first-degree cadets with fifty-nine percent expressing a negative sentiment. Also, less than half of female cadet respondents said the Academy provides a supportive climate for sexual assault victims.<sup>1269</sup> The survey did not attempt to determine the extent of the problem with relevant questions about whether respondents had been sexually assaulted. During the same period, to try and get a better understanding of the environment, Lt Gen Dallager arranged informal lunches in his office for cadet representatives from each of the four classes to assess their perspectives on the Academy's climate.<sup>1270</sup> These informal meetings tended to confirm his concerns regarding the social climate.<sup>1271</sup>

Brigadier General Wagie was the only member of the Academy's senior leadership who was aware of the sexual assault survey data and the number of cases reported to the Cadet Counseling Center, and had a unique perspective to appreciate the significance of the data.<sup>1272</sup> He began his current assignment at the Academy in 1987.<sup>1273</sup> He was there when Lt Gen Hosmer met with the female cadets and shortly thereafter Lt Gen Hosmer tasked him to develop the Center for Character Development.<sup>1274</sup> He was the first Director of the Center for Character Development and served in that capacity from June 1994 to July 1996.<sup>1275</sup> He attended the meeting Lt Gen Stein held with the Surgeon General, the Inspector General, and the Judge Advocate General in February 1997.<sup>1276</sup> After serving as the Vice Dean of the Faculty from July 1996 to June 1998, he became the Dean of the Faculty and he has served in that capacity for nearly five years.<sup>1277</sup> As the Dean, he oversees the Cadet Counseling Center and receives frequent updates from the Director on the number of cadets reporting sexual assaults to the Cadet Counseling Center.<sup>1278</sup> Brigadier General Wagie is the chairperson of the Character Development Commission and attends the monthly meetings.<sup>1279</sup> He said the commission is briefed on the Social Climate Surveys, although he did not recall the sexual

<sup>1268</sup> Results of Sexual Assault Reporting and Treatment Survey, January 2003, Exhibit 210. Of nearly 4,000 cadets, 2,893 completed the survey. *Id.*

<sup>1269</sup> *Id.*

<sup>1270</sup> Statement of Lt Gen Dallager, Exhibit 71, at 46 and 78, and Statement of the Vice Superintendent, Exhibit 293, at 12 and 29. The lunches were held in January 2003. *Id.* at 12.

<sup>1271</sup> Lieutenant General Dallager said at the lunches and other informal meetings he found there was a high degree of sexual harassment, which he described as "much higher than any Air Force organization I've been in." Statement of Lt Gen Dallager, Exhibit 71, at 46.

<sup>1272</sup> Brigadier General Wagie said he has served under four Superintendents and with six Commandants. Statement of Brig Gen Wagie, Exhibit 198, at 49. He was involved in implementing some of the recommendations made in the reports prepared by the General Accounting Office in the period between 1993-1995, and he was a member of the Character Development Review Panel led by Lt Gen Hosmer in 2000 and 2002. Statement of Brig Gen Wagie, Exhibit 209, at 24-25.

<sup>1273</sup> Biography of Brig Gen Wagie, Exhibit 294.

<sup>1274</sup> Statement of Brig Gen Wagie, Exhibit 198, at 44-45.

<sup>1275</sup> Biography of Brig Gen Wagie, Exhibit 294.

<sup>1276</sup> Briefing to SAF/IG, SAF/SG and AF/JA, February 14, 1997, Exhibit 295. The notes accompanying the briefing slides indicate the Superintendent established a Social Climate Process Action Team in February 1995 to address the social climate in general and sexual assault specifically, and then Col Wagie chaired the team. *Id.* at slide 14. The briefing included sexual assault survey data for Academic Years 1995-1996 and 1996-1997. *Id.* at slides 23-26. The team met every ten days to two weeks and provided frequent updates to Lt Gen Stein. E-mail from Director of Curriculum, Squadron Officer College (former Director of Cadet Counseling Center), Exhibit 61.

<sup>1277</sup> Biography of Brig Gen Wagie, Exhibit 294.

<sup>1278</sup> Statements of Brig Gen Wagie, Exhibit 198, at 94-95, and Exhibit 209, at 18-19.

<sup>1279</sup> Statement of Brig Gen Wagie, Exhibit 209, at 5.

assault portion being briefed in 2002.<sup>1280</sup> He did remember discussing the numbers from the 2002 sexual assault survey with the staff at the Cadet Counseling Center.<sup>1281</sup> He said when he would see the numbers from the sexual assault survey he would compare them with the information from the Cadet Counseling Center on the number of sexual assaults reported to them. He indicated the survey's definition of sexual assault was broad and could include an unwanted pat on the back, so he believed the Cadet Counseling Center numbers were a more accurate reflection of what he viewed as criminal sexual assaults.<sup>1282</sup> Brigadier General Wagie recalled Lt Gen Dallager asking the senior staff how widespread sexual assaults were, usually during a discussion about a specific incident, and talking about general impressions, but there is no indication that Brig Gen Wagie ever provided him the specific numbers from the sexual assault surveys.<sup>1283</sup>

With the Superintendent and the Commandant aware of little information from the sexual assault program, the Sexual Assault Services Committee meeting less frequently, survey data related to sexual assaults not being elevated to senior leadership, the senior staff not interacting well, and events like the September 11<sup>th</sup> terrorist attacks diverting attention elsewhere, the Academy's leadership may not have been attuned to the aggregate effect of other indicators relevant to sexual assaults, specifically beginning in the second half of 2001 and continuing through the Fall of 2002, an increased number of sexual assaults were reported.<sup>1284</sup> The Working Group found ten allegations (including six cadet-on-cadet cases) that were reported to AFOSI between July 1, 2001 and December 31, 2002 (a year and a half period) compared with five allegations (including four cadet-on-cadet cases) in the preceding eighteen-months.<sup>1285</sup> The Cadet Counseling Center initiated forty-three sexual assault tracking sheets (many incidents were not recent and/or did not implicate cadets as suspects) based upon incidents reported to them between July 1, 2001 and December 31, 2002. We are unable to determine from the tracking sheets what information about these incidents was conveyed to the Commandant or the Superintendent.<sup>1286</sup>

<sup>1280</sup> *Id.* at 4-5, 9-14, 18.

<sup>1281</sup> *Id.* at 21. Eighty cadets answered that they had been sexually assaulted in the 2002 survey. Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, at Attachment 4).

<sup>1282</sup> *Id.* at 18-20.

<sup>1283</sup> *Id.* at 22-23.

<sup>1284</sup> AFOSI Reports of Investigation, Exhibit 389, Exhibit 414, Exhibit 337, Exhibit 191, Exhibit 324; AFOSI Reports (Summarized), Exhibit 326, Exhibit 297, Exhibit 298, Exhibit 299.

<sup>1285</sup> AFOSI Reports of Investigation, Exhibit 389, Exhibit 414, Exhibit 337, Exhibit 191, Exhibit 324; AFOSI Reports (Summarized), Exhibit 326, Exhibit 297, Exhibit 298, Exhibit 299. For the January 1, 2000 to June 30, 2001 period, see Exhibit 328, Exhibit 163, Exhibit 320, Exhibit 327. Brigadier General Gilbert was not the Commandant when one of the cases (a cadet-on-cadet case) was reported. Statement of Brig Gen Wagie, Exhibit 198, at 113. Brigadier General Wagie, who served as the Director of the Center for Character Development at the request of Lt Gen Hosmer in 1994 shortly after it opened, said the emphasis on sexual assault awareness and treatment dimmed when major incidents occurred. He noted, "ten years ago we took sexual assault very seriously." *Id.* at 44. His assessment of what happened over those ten years to take the focus off of sexual assaults was, "I think we have probably been distracted by other events...." *Id.* at 113.

<sup>1286</sup> Sexual Assault Services Tracking Sheets, Exhibit 301. Seven of the reports were for alleged incidents that had occurred years earlier and were unrelated to the Academy. Three were anonymous reports that surfaced through written materials or from a third party. One case was reported by a civilian victim who, at the time the tracking sheet was prepared, was not sure she wanted to file a formal report. One case involved an alleged civilian subject. Three of the tracking sheets indicated the Counseling Center had notified AFOSI. *Id.* Tracking sheets were not available for the preceding eighteen-month period. The tracking sheets included two that Lt Gen Dallager initialed, one that Brig Gen Gilbert initialed and another containing a side note from him to the Vice Commandant with his initials.<sup>1286</sup> Twenty-two sheets were initialed by the Vice Commandant and annotated to reflect that the Commandant and the Superintendent were briefed on the incidents. *Id.* Seven of these twenty-two sheets indicated that Brig Gen Gilbert was the person who briefed the Superintendent. *Id.* We are unable to determine from the tracking sheets what information was conveyed to the Commandant or the Superintendent.

### *E. Composition of the Academy Leadership, Faculty and Staff*<sup>1287</sup>

While not directly connected to sexual assaults or responding to such incidents, the Working Group found that the demographics of the Academy's military personnel are not reflective of Air Force officer demographics in some respects.<sup>1288</sup> This has the potential to insulate the Academy from a broader range of experiences and perspectives a more diverse force would offer. A review required by the *Agenda for Change* should address this.

The percentage of officers currently assigned to the Academy who were commissioned through the Academy is more than two and a half times the representation of Academy graduates among all Air Force officers and more than double the percentage for line officers. Fewer than one-fifth of all Air Force officers and less than one-fourth of line officers received their commissions through the Academy, yet almost half of the Academy's permanent party faculty and staff is made up of Academy graduates.<sup>1289</sup> This imbalance is most notable among the senior leadership where the Superintendent, the Commandant, the Dean of the Faculty, the Athletic Director, and the 10<sup>th</sup> Air Base Wing Commander are all Academy graduates.<sup>1290</sup> More than half of the members of the Academy Board are Academy graduates, and four of the five Board members that are not graduates have over twenty-years total time on station at the Academy.<sup>1291</sup> Fifty-five percent of the forty-two colonels assigned to the Academy are graduates compared with less than twenty-two percent of colonels throughout the Air Force and less than twenty-eight percent of line colonels.<sup>1292</sup>

Women constitute eighteen percent of all Air Force officers and just over thirteen percent of line officers. Women represent about fourteen percent of the officers assigned to the Academy.<sup>1293</sup> There are no women among the Academy's five senior leaders and no woman has ever served as the Superintendent or as the head of one of the Academy's primary elements.<sup>1294</sup> Of the forty-two colonels at the Academy, three are women, which is below the proportion of women serving in that rank throughout the Air Force.<sup>1295</sup>

Historically, the average assignment length for an Air Force officer is about three years.<sup>1296</sup> Seventy-four officers at the Academy have four or more consecutive years time on station at the Academy, of these eighteen members have ten or more consecutive years time on station, of these

<sup>1287</sup> All figures are based upon January 2003 data provided by the Air Force Personnel Center. The data does not include officers assigned to the 10<sup>th</sup> Air Base Wing, the 10<sup>th</sup> Medical Group, and the Academy Preparatory School.

<sup>1288</sup> The information provided by the Air Force Personnel Center excluded officers in the legal, chaplain and medical career fields from their computations for "line officers." Officers in these three career fields account for twenty percent of all Air Force officers and about seven percent of the officers included in the data provided on the Academy's officer composition. Academy Officers Assigned, Exhibit 229; Current Active Air Force Officers, Exhibit 302.

<sup>1289</sup> About fifty percent of the Academy's faculty and staff are Academy graduates. The Athletic Department has the greatest percentage of Academy graduates at eighty-eight percent and the Headquarters USAFA staff has the lowest percentage at thirty-seven percent. Academy Officers (spreadsheet), Exhibit 229.

<sup>1290</sup> *Id.*

<sup>1291</sup> Academy Board Composition (spreadsheet), Exhibit 303. The four Board members that are not Academy graduates but have more than twenty-years time on station average over twenty-four years at the Academy. The highest has over twenty-nine years total time at the Academy, including over twenty years in the current assignment. *Id.*

<sup>1292</sup> Academy Colonels (spreadsheet), Exhibit 304

<sup>1293</sup> *Id.*

<sup>1294</sup> Historical List of Academy Key Staff, Exhibit 355.

<sup>1295</sup> Academy Colonels (spreadsheet), Exhibit 304. Women account for seven percent of the Academy's colonels while more than eleven percent of all Air Force colonels, and 9.5% of line colonels, are women. *Id.*

<sup>1296</sup> Average Officer Tour Length (chart), AFPC/DPSAA, Exhibit 305.

seven members have fifteen or more consecutive years time on station, and of these one member has twenty-six consecutive years time on station.<sup>1297</sup> The forty-two colonels average over ten years total time at the Academy. Eighteen of them have over ten years total time on station; of these, twelve have over fifteen years; and of these, six have over twenty years, and three have over twenty-five years.<sup>1298</sup>

#### ***F. Review of Sexual Assault Cases***

Pursuant to the Secretary's guidance to evaluate the effectiveness of the Academy's sexual assault deterrence and response processes,<sup>1299</sup> we undertook an analysis of the investigated cases containing allegations of sexual assault at the Academy. The purpose of this analysis was to evaluate whether, in light of the available evidence, the criminal dispositions taken by the Academy leadership appeared to be reasonable. The review was performed by staff team members having military justice expertise.

In an effort to provide a general assessment of action on investigated allegations of sexual assault, we evaluated all cases containing investigated allegations of sexual assault that occurred between January 1, 1993 and December 31, 2002, and were reported to the Academy in that time frame. There were a total of fifty-seven such cases. (Fifty-two AFOSI cases plus five other cases where equivalent facts were developed by other means.)<sup>1300</sup>

We are aware that in normal practice, command decisions on case dispositions are made in a fluid environment with changing and often competing dynamics, including such factors as the prosecutor's evaluation of witnesses. Assessing those command decisions based upon a review of reports of investigation may be instructive for process analysis, but cannot provide a definitive judgment on command's decisions. Further, the Air Force Inspector General is separately reviewing specific cases, and our general evaluation cannot be taken as a substitute for such detailed evaluation. Where we have identified concerns, they have been provided to the Inspector General for consideration.

<sup>1297</sup> Academy Officers (spreadsheet), Exhibit 228. There is a concern, however, that if military members are required to rotate after a single tour it could hurt the stability and cohesion of the academic programs. See E-mail, Accreditation Impact of High Faculty Turnover, April 24, 2003, Exhibit 306.

<sup>1298</sup> Academy Colonels (spreadsheet), Exhibit 304.

<sup>1299</sup> SECAF Guidance for the General Counsel and Working Group, Exhibit 3.

<sup>1300</sup> The five cases with facts developed by other means consisted of sexual assault allegations other than rape. One case involved information considered by a Military Review Committee convened to review a cadet's excess demerits. Cadet Record, Exhibit 307. The demerits were received for fraternization. *Id.* Information of the circumstances for the demerits raised an issue of sexual assault. *Id.* The second case was discovered in an Air Force Personnel Council file regarding the voluntary disenrollment of a cadet in lieu of involuntary disenrollment. Memorandum for Secretary of the Air Force General Counsel, August 5, 1996, and ancillary documents, Exhibit 308. The Memorandum signed by the Director, Air Force Review Board Agency notes the cadet received nonjudicial punishment for committing an indecent act by placing his hand on the knee of a female cadet and moving his hand down her leg. *Id.* The third case involved information obtained during a Board of Officer Inquiry of female cadet who allegedly told another female cadet that she was a homosexual. Report of Inquiry, First-Class cadet, Exhibit 309. During the inquiry the female cadet to whom the alleged statement was made divulged that the subject had touched her breasts and genital area without her consent. *Id.* The fourth case involved a Security Forces' investigation into the allegation that a civilian employee illegally gave Government property to a female cadet and on one occasion grabbed her buttock. Security Forces Report of Investigation, Exhibit 310. The fifth case involved allegations of rape and forcible sodomy that were disclosed during a female cadet's disenrollment proceedings. Cadet Disenrollment Package, Exhibit 406.

## 1. The Process.<sup>1301</sup>

Of the fifty-seven<sup>1302</sup> cases examined, eight cases are still being investigated, with final action in those matters pending, and therefore not evaluated.<sup>1303</sup>

Of the forty-nine remaining cases, we found that four of the cases involved victims who were cadets but the alleged assailants, who were military members, were neither stationed at, nor assigned to the Academy. Therefore, the Academy command did not have authority to determine the final disposition of the sexual assault allegations.<sup>1304</sup> In addition, another case involved a cadet accused of sexually assaulting a civilian in Denver, Colorado. The civilian authorities adjudicated this case.<sup>1305</sup> We did not assess these cases because their disposition fell outside the Academy's authority, leaving forty-four cases for review.

In one case, developed by means other than an AFOSI report of investigation, the only information available to the team was contained in an Air Force Personnel Council

<sup>1301</sup> The portion of the staff team assessing the cases consisted of six members, three males and three females. All members of the team had experience as trial counsel (prosecutor) and/or defense counsel in courts-martial, and two of the members have served as Staff Judge Advocates. Cases were reviewed then briefed to the other members. The team then discussed how the case should be characterized. In making its characterization the team took into consideration the sufficiency of the evidence, as presented in the Reports of Investigation, and the availability/cooperation of the victim. The team members were in unanimous or near-unanimous agreement on the characterization of most cases. The team then compared its characterization of the matter with the actual action taken. Various references are made in the footnotes below to administrative discharges. The review did not consider the appropriateness of the characterization of discharge as there are too many potential variables and unknowns to be taken into account. When administratively discharging a cadet for misconduct there are three potential characterizations of discharge that may be awarded; they are: "Honorable;" "General (Under Honorable Conditions)," and, "Under Other than Honorable Conditions." As a general matter, increased due process, time and expense are required as the severity of characterization increases, ranging from notice and opportunity to respond, to use of a Hearing Officer, to use of a Board of Officers. A cadet faced with discharge may offer to resign instead, often conditioning his or her resignation on receiving a better characterization than may result from a hearing. Discharge with "Under Other than Honorable Conditions" has adverse consequences in civilian life which can be lifelong and can affect veterans benefits; this is also true of a "General (Under Honorable Conditions) discharge, but to a lesser degree.

<sup>1302</sup> The fifty-seven AFOSI cases that are a part of the sixty-one total cases assessed in this section include three cases with multiple victims. The case found in AFOSI Report of Investigation, Exhibit 311, involved two female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving two victims in the statistics section. In addition, the case found in AFOSI Report of Investigation, Exhibit 312 involved two female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving two victims in the statistics section. Lastly, the case found in AFOSI Report of Investigation, Exhibit 393, involved three female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving three victims in the statistics section. (Note: There were a total of five named victims but only three appeared to have been the victim of conduct ordinarily considered criminal.) (For more statistical information, see this Report, Section III.H., Statistics on Sexual Assault.)

<sup>1303</sup> See generally AFOSI Item, Exhibit 313; AFOSI Report (summary), Exhibit 299; AFOSI Report (summary), Exhibit 314; Cadet Disenrollment, Exhibit 315; Cadet Record, Exhibit 307; Security Forces Investigation, Exhibit 310; and Office of Special Investigations Report (summary), Exhibit 298.

<sup>1304</sup> These cases were handled by the respective commands of the suspects. AFOSI Report of Investigation, Exhibit 316; AFOSI Report of Investigation, Exhibit 317; AFOSI Report of Investigation, Exhibit 318; and, AFOSI Report of Investigation, Exhibit 319.

<sup>1305</sup> This case involved a male cadet arrested by civilian authorities for assaulting two people and sexually assaulting a third person after becoming extremely intoxicated at a concert in Denver, Colorado, in July 2000. The sexual assault victim was an illegal alien and she was deported prior to the case coming to trial in December 2000. In accordance with the terms of a plea agreement entered into with the local district attorney, the cadet pled guilty to one count of criminal attempt and all other charges were dismissed. Complaint Initiation Information Form, Exhibit 320. He was sentenced to eighteen months probation, completion of an alcohol education course, and assessed court costs. *Id.*

memorandum.<sup>1306</sup> The memorandum referenced a nonjudicial punishment action for an indecent act (hand on leg), but no background information was available. Without additional information, the team was unable to assess the disposition of the matter, leaving forty-three cases for review.

To give an idea of the nature of the cases, our review indicated that twenty of the forty-three cases did not appear sufficiently strong to recommend criminal action (court-martial or UCMJ, nonjudicial punishment). Most of these involved facts with such significant issues regarding suspect identity, consent, or mistake of fact regarding consent that the chances of successful criminal action would not have justified the attempt. For similar reasons, seven others were problematic but may have justified initiating criminal action. Consequently, for a majority of the cases, the risk of initiating criminal action would have varied between unacceptable and significant.

Most case dispositions appeared within reasonable bounds of discretion; however, the Academy's disposition of some cases raised questions, described below.

## 2. The Detailed Analysis.

Of the forty-three cases considered, six were referred to and adjudged by courts-martial.<sup>1307</sup> The facts of each of the six cases warranted trial by court-martial.<sup>1308</sup> Five of the six cases resulted in conviction, and one acquittal.<sup>1309</sup>

Each of the thirty-seven remaining cases were reviewed and assigned to one of four categories based upon the facts in the available information: (1) clearly not adequate evidence to support criminal charges; (2) some evidence, but not adequate to pursue criminal charges; (3) not strong evidence, but may be adequate to pursue criminal charges; and (4) cases where the evidence would support criminal charges.

## 3. The Assessment.

### (a) Clearly not adequate evidence to support criminal charges.

After reviewing the facts and discussing the merits of the thirty-seven cases, we determined that eight of the cases were clearly not viable cases for criminal charges.

Of these eight cases, three involved investigations in which a suspect was never identified, making charges impossible.<sup>1310</sup> In two other cases, before suspects were identified the victims

<sup>1306</sup> This matter was discovered in an Air Force Personnel Council Memorandum signed by the Director, Air Force Review Board Agency, in which a reference was made to nonjudicial punishment the cadet received for an indecent act. Memorandum for Secretary of the Air Force General Counsel, August 5, 1996, and ancillary documents, Exhibit 308.

<sup>1307</sup> The outcomes of the convictions were: (1) Dismissal from the service, confinement for eighteen months, and forfeiture of all pay and allowances, Courts-Martial for Sexual Misconduct, Exhibit 258; (2) Dismissal from the service, confinement for two months, and forfeiture of all pay and allowances, *Id.*; (3) Dismissal from the service and confinement for four years, *Id.*; (4) Dismissal from the service, confinement for seven months, and forfeiture of all pay and allowances, *Id.*; and (5) Dismissal from the service and confinement for six months, *Id.* A "Dismissal" is the Officer/Cadet equivalent of a Dishonorable Discharge for enlisted members.

<sup>1308</sup> AFOSI Report (summarized), Exhibit 297; AFOSI Report of Investigation, Exhibit 321; AFOSI Report of Investigation, Exhibit 322; AFOSI Report of Investigation, Exhibit 180; AFOSI Report of Investigation, Exhibit 394; and, AFOSI Report of Investigation, Exhibit 323.

<sup>1309</sup> One court-martial resulted in an acquittal. Courts-Martial for Sexual Misconduct, Exhibit 258.

decided not to cooperate with the investigators.<sup>1311</sup> Two other cases involved investigations in which suspects were never identified and the complainants recanted their allegations of rape.<sup>1312</sup> In the eighth case, although a suspect was initially identified, the report indicated the complainant subsequently recanted her allegations.<sup>1313</sup>

(b) Some evidence but not adequate to pursue criminal charges.

Of the remaining twenty-nine cases for review, we found that twelve cases involved some evidence of sexual assault, but the evidence appeared too problematic to make pursuit of criminal charges a viable choice. Each of the reports of investigation were reviewed and the facts discussed, and it was concluded that the disposition of each of the twelve cases regarding criminal charges appeared to be within reasonable discretion.<sup>1314</sup>

<sup>1310</sup> AFOSI Report of Investigation, Exhibit 324; AFOSI Report of Investigation, Exhibit 325; and AFOSI Report of Investigation, Exhibit 395. All three incidents occurred on Academy property. *Id.* The reports indicate the AFOSI made reasonable investigative efforts in each case. *Id.*

<sup>1311</sup> AFOSI Report (summarized), Exhibit 326. The female civilian victim refused to cooperate with the AFOSI. In AFOSI Report of Investigation, Exhibit 396 the cadet victim was unable to identify her assailant. She subsequently left the local area and declined to cooperate further in the investigation.

<sup>1312</sup> AFOSI Report of Investigation, Exhibit 327 and AFOSI Report of Investigation, Exhibit 328.

<sup>1313</sup> The female cadet victim and male cadet subjects were friends and had previously engaged in consensual sexual intercourse and the victim had given the subject reason to believe that she would welcome the act of being awakened by sexual intercourse. The alleged victim and subject were studying in the subject's dorm room and the victim fell asleep. The subject placed the sleeping victim in his bed and he went to sleep laying beside her. When the victim awoke the subject was having sexual intercourse with her. The victim had been raped by a boyfriend before entering the Academy. She told investigators that while the subject was having sexual intercourse with her she had a flashback and saw the face of the boyfriend who had raped her. She said the subject's actions were not rape. AFOSI Report of Investigation, Exhibit 329.

<sup>1314</sup> See AFOSI Report of Investigation, Exhibit 191. This case involved a female cadet victim and subject engaged in sexual acts at least twice, once in her dormitory room and once in his room and perhaps other times thereafter. The victim's actions and words did not clearly convey a lack of consent and she stated that she did not consider what subject did to constitute rape. No action was taken in this case, but subject was found guilty of sodomy in a general court-martial in another case. Courts-Martial for Sexual Misconduct, Exhibit 258. The second case, AFOSI Report of Investigation, Exhibit 163, involved a female cadet victim who claimed subject made veiled threats to report her for cadet infractions which caused her to acquiesce to several sexual encounters over several months. The victim made statements to other cadets that did not indicate rape. The subject, who passed an AFOSI polygraph test, was disenrolled for fraternization. In the subsequent discharge action the subject's service was characterized as Honorable. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 407. The third case, AFOSI Report of Investigation, Exhibit 330, involved a case of female cadet victim who was extremely intoxicated when she awoke and saw the subject standing in her room. She stated she did not recall anything further. When she awoke the next morning and she had some vaginal bleeding and soreness, but had no recollection of any sexual contact. Neither the medical examination nor the forensic examination of the victim's bedding disclosed any conclusive information. The subject voluntarily resigned from the Academy for personal reasons. The fourth case, AFOSI Report of Investigation, Exhibit 331, dealt with the case of a female civilian victim and a male cadet subject who were dating and had previously engaged in consensual sex. The victim claimed subject slightly pushed her head down towards his penis and she performed fellatio on him for a brief period. Victim did not object to fellatio. No action was taken in this matter. The fifth case, AFOSI Report of Investigation, Exhibit 332, is a case in which the female cadet victim, male cadet subject, and another cadet consumed a large amount of alcohol. They shared a hotel room. Subject admitted kissing and fondling the victim, but said it was consensual. The third cadet observed the sexual contact and said it appeared to be consensual. The victim alleged that the subject penetrated her with his penis. Subject denied penetration with his penis, but stated that he may have accidentally penetrated the victim with his thumb while they were engaged in fondling. The victim indicated that she did not believe she ever said no or attempted to resist the subject. Subject graduated late. The sixth case, AFOSI Report of Investigation, Exhibit 333, involved a female cadet victim and male cadet subject, who participated in a drinking game, which resulted in both being intoxicated. Victim and subject went to sleep in the victim's bed. In bed the two began kissing and the subject put his fingers in the victim's vagina. The victim did not object to the subject's action. At the subject's request the victim removed her shirt. The subject straddled the victim and rubbed his penis

against the victim's clothed crotch. The subject removed the victim's shorts, then asked if she wanted him inside her to which she said nothing, and did not object. The subject began having intercourse with the victim until she asked him to stop because he was hurting her. The subject withdrew his penis and laid beside the victim, kissing her. Then the subject began having intercourse with the victim again, asking her if she was enjoying the act. The victim did not respond and did not object to intercourse. The subject subsequently withdrew his penis and ejaculated. The victim fell asleep. Later, the victim awoke and discovered that the subject atop of her with his penis thrusting inside of her vagina. She said nothing but began to scratch the subject's back. At the subject's request she stopped scratching his back. The subject turned the victim over onto her stomach and she said he was raping her from behind. After intercourse, the subject told the victim he needed to go to the bathroom. The victim walked the subject to the bathroom and then back to her room to spend the night. When they returned from the bathroom, the subject asked the victim if she wanted him to sleep in her roommate's bed, which was empty; the victim told the subject she didn't care. *Id.* When the subject was interviewed he stated that he believed that all acts were consensual. The subject received cadet discipline for violating cadet regulations and graduated. The seventh case, AFOSI Report of Investigation, Exhibit 345, is the case of a female civilian victim who claimed she was forced to have sex with cadet subject and a male civilian while all were attending a house-party. Both the subject and the male civilian denied the allegation. One witness stated that the victim told him prior to the alleged rape that she intended to have sex with the subject. Other witnesses stated that the victim was upset when the subject left the victim's bedroom during the alleged rape to speak to another female. *Id.* No action was taken against the subject. The eighth case, AFOSI Report (summary), Exhibit 334, involved a case of a male cadet victim who claimed subject (a male cadet) masturbated him and performed fellatio on him. The subject claimed he and victim engaged in mutual, consensual sex. With regard to the issue of consent the subject passed a polygraph and the victim failed a polygraph. The subject received nonjudicial punishment for sodomy and voluntarily resigned from the Academy in lieu of an involuntary discharge. The subject received a General (Under Honorable Conditions) discharge. See DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 408. The ninth case, AFOSI Report of Investigation, Exhibit 335, involved a claim by a female cadet victim that a male cadet subject raped her while on a camping trip with other cadets. The victim did not report the incident but told another cadet approximately four months later and that cadet notified the commander. Subject admitted kissing and fondling the victim, but denied having intercourse. *Id.* The victim was not eager to pursue prosecution. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. Subject passed an AFOSI polygraph. AFOSI Report of Investigation, Exhibit 335. No action was taken against the subject. In the tenth case, AFOSI Report of Investigation, Exhibit 397, a female cadet victim was attacked by an unknown assailant (although it was believed that he was a cadet because the victim believed she felt his Academy ring) while walking to her dorm room. During the course of the attack the victim was able to strike the subject on the side of his face. An analysis of a cadet pool of over eighty possible assailants produced the subject as the possible assailant (he had a bruise on the side of his face at the time) however sufficient evidence was never recovered to establish the subject as the assailant. No action was taken against the subject in the matter although the subject subsequently received nonjudicial punishment for an unrelated sexual assault and was involuntarily disenrolled from the Academy and received a General (Under Honorable Conditions) discharge characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The eleventh case, AFOSI Report of Investigation, Exhibit 399, involved a female cadet victim who had been playing cards and drinking with other cadets earlier in the evening. When she returned to her room there was a note from the subject, to whom the victim had issued an open invitation to visit her, that he had stopped by but she wasn't there but he would stop by again later. Subject, who was intoxicated, returned to the victim's room and talked to her. They talked briefly before the victim fell asleep. *Id.* The victim stated that she awoke, naked from the waist down, with the subject on top of her, and although she was scared she passed out. She stated she awoke later to find the subject performing cunnilingus on her. Subject stated that he and the victim kissed and the victim pulled him up to her bed and pulled up her shirt. Subject stated that victim carried on a coherent conversation and helped him take off the boxer shorts she was wearing. The subject stated that the victim was awake when he began performing cunnilingus on her but she stopped moving, and after a few minutes he realized that she was asleep. He then stopped, lay next to her and went to sleep. He awoke and left the next morning before she awoke. The victim's roommate, a self-proclaimed sound sleeper, was in the room the entire time but did not hear anything. The victim did not report the incident until three months later after the subject graduated. The subject received a letter of reprimand. *Id.* The twelfth case, AFOSI Report of Investigation, Exhibit 398, involved a female cadet victim who went to subject's room where they kissed. Subject placed victim's hand on his penis and unbuttoned the victim's blouse and shorts. The subject rubbed his penis on victim's vagina and penetrated slightly. During the encounter, victim never expressed any lack of consent. The subject resigned in lieu of a conduct board for violating cadet regulations. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

(c) Not strong evidence, but may be adequate to pursue criminal charges.

Of the remaining seventeen cases, we considered eight not to have strong evidence, but which may have been adequate to support initiation of criminal charges. In two of the eight cases, command initiated criminal charges and the disposition appeared within reasonable discretion.<sup>1315</sup> In two other cases, we acknowledged that the command's decision not to pursue criminal charges also appeared within reasonable discretion.<sup>1316</sup> In two of these cases, evidence exists that raises the issue of whether the suspect could have mistaken the actions of the victim and reasonably believed the victim was a consensual partner.<sup>1317</sup> The remaining two cases involved significant

<sup>1315</sup> AFOSI Report of Investigation, Form 1168, Statement of Suspect/Witness/Complainant, Exhibit 202, involved the subject fondling a female cadet victim in her dorm room. The subject received nonjudicial punishment and was involuntarily disenrolled from the Academy. He was subsequently discharged from the service with an Under Other Than Honorable conditions service characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 410. The second case, AFOSI Report of Investigation, Exhibit 347, involved a male cadet subject and a female cadet victim who were among fifteen cadets on a ski trip. The victim was intoxicated and fell asleep. The victim felt someone insert a finger into her vagina, but could not identify who the individual was. The subject was observed sleeping next to the victim in a room shared with others. Although court-martial charges were initiated, the Article 32 investigating officer recommended not proceeding to trial. The subject graduated and was commissioned as an officer. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8

<sup>1316</sup> A female cadet victim alleged the subject raped her after she accepted a ride on base. The victim did not report the incident for more than three months. In the interim period, she told other people she was raped, but the story was different from what she told the AFOSI. AFOSI Report of Investigation, Exhibit 338. Specifically, the victim told the AFOSI that the subject alone raped her. However, in other accounts she provided there were marked inconsistencies in the number of assailants, whether the assault occurred inside or outside the car, and their actions during the assault. *Id.* The second case involved the touching of a female cadet's breasts and genital area by another female cadet. Board of Proceedings and Legal Review, Exhibit 309. The incident involved the two cadets sharing a bed with another cadet while spending the night at their coach's house. *Id.* The third cadet was asleep during the incident. *Id.* A discharge board convened to determine whether subject should be discharged for homosexuality. *Id.* The discharge board recommended the suspect be discharged with a General (Under Honorable Conditions) discharge. *Id.* The subject was retained by Secretary of the Air Force decision. Memorandum, Re: Cadet Discharge, Action of the Secretary of the Air Force, December 13, 1996, Exhibit 376

<sup>1317</sup> One of the cases involved a female civilian victim who went back to the subject's dormitory room after a football game. The victim agreed to remove her clothing down to her underwear and get into bed with the subject. Subject asked the victim to remove his underwear, which she did. The victim's underwear was later removed, but she did not recall how. When the suspect attempted to insert his penis into her vagina the victim said "no," and he stopped. Subject and victim remained in bed and talked and cuddled. Subject then performed cunnilingus on the victim and inserted his fingers into her vagina. The victim stated she did not protest. The victim agreed to simulated intercourse, "dry sex," with the suspect during which his penis penetrated the victim's vagina. The victim said he ignored her saying "no" repeatedly. Subject received cadet discipline and graduated with his class. AFOSI Report of Investigation, Exhibit 340. Another case involved a female cadet victim who was in the subject's dormitory room where they watched a movie. The victim stated the subject started rubbing her shoulders, then began to touch her breasts, and tried to remove her clothing. The victim stated she said "no" several times, but subject proceeded and she assumed a "submissive role." AFOSI Report of Investigation, Witness Statement, Exhibit 342, at 40. The subject stated that while watching the movie he and victim began French-kissing. The subject stated that he locked the door and returned to the victim and the continued to kiss, he also touched her breasts and the victim's hands were inside his shirt. The subject stated he took off his shirt and the victim removed her sweater. The victim stated that the subject then removed her clothing, forced her head down towards his penis, and placed her head so she could perform fellatio on him. The subject stated that he tried to slip the victim's jeans off but was unsuccessful so the victim removed her jeans herself. Subject stated that while he was fondling the victim's breasts, she pulled his shorts and underwear down and performed fellatio. Subject later applied a condom from a package the victim opened and engaged in sexual intercourse with the victim. Subject received administrative punishment by means of the Cadet Disciplinary System and graduated from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

issues of fact that would be detrimental to victim credibility.<sup>1318</sup> We were unable to reach a collective opinion on the reasonableness of the dispositions of the latter four cases based upon the information available.

(d) Evidence supports criminal charges.

Of the remaining nine cases, it was determined that the nine cases were viable for criminal charges (court-martial or non-judicial punishment under the Uniform Code of Military Justice). Command actions appeared to be within reasonable discretion in eight of the nine cases.<sup>1319</sup>

<sup>1318</sup> In one case, AFOSI Report of Investigation, Exhibit 400, approximately two months had elapsed before the incident was reported. The victim, a civilian female, stated she went to the subject's dormitory room while waiting for a friend to dress for dinner. The victim stated that while there subject pulled her by her shirt to the floor. Subject climbed on her and put his hand inside her shirt on the outside of her bra. He unzipped the victim's pants, placed his hand inside her underwear, and inserted his finger into her vagina. He took the victim's hand and placed it on his penis inside his shorts. The victim stated the subject's alarm clock went off and the subject got up to turn off the clock. The victim remained on the floor. The victim stated the subject returned to where the victim was and asked if she was sure she did not want to have sex. She stated she told the subject that she did want to have sex and the subject let her leave the room. Subject acknowledged that he and the victim engaged in consensual sexual acts, but the acts took place on his bed. *Id.* Subject received cadet discipline. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The other case, AFOSI Report of Investigation, Exhibit 311, involved a party with a group of cadets. The victim stated that during the party, subject pulled the victim into a bedroom, removed her clothing, and forced her to engage in intercourse. The victim said subject ignored her demands to stop and continued to rape her until some of the other cadets knocked on the bedroom door. Subject claimed the sexual activity was consensual. Other witnesses observed the victim either completely or partially nude in a hot tub with two males, one of which was the subject, a few hours after the alleged rape. At a different time the same subject was alleged to have sexually assaulted another female cadet victim at his parent's house. The victim said she was intoxicated and went to bed. She awoke to find the subject in bed with her and he forced her to perform fellatio on him. Subject claimed the sexual activity was consensual. Subject passed a polygraph with respect to both incidents. Memorandum for AFOSI, Re: PDD Examination, Exhibit 339. Subject resigned in lieu of involuntary separation proceedings for fraternization and received an Honorable service characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 407.

<sup>1319</sup> In the first case, the victim, a fifteen-year-old civilian female was an acquaintance of the subject. The victim and subject had previously engaged in sexual activity. Victim, after consuming some alcohol consented to sexual intercourse with the subject. The act did not constitute statutory rape under Colorado state criminal law. AFOSI Report of Investigation, Exhibit 337. The subject voluntarily resigned in lieu of an administrative separation conditioned on receipt of General (Under Honorable Conditions) discharge. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 411. The command accepted the conditional discharge offer because the parents of the victim indicated they would refuse to allow their daughter to cooperate. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. In the second case, AFOSI Report of Investigation, Exhibit 341, the victim, a female civilian, met the subject at a party. Victim and subject went to a bedroom where victim performed fellatio on the subject. Subject digitally penetrated victim with several of his fingers and performed cunnilingus on victim. Victim stated that subject began to penetrate her vagina with his penis and she told him to stop. Victim stated subject continued to insert his penis in her vagina but lost his erection. *Id.* Subject stated that he did digitally penetrate the victim but as he attempted to have intercourse with the victim she stated "no" at which time he stopped. *Id.* Subject resigned in lieu of court-martial. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The disposition of the matter was made at the Secretary of the Air Force level and the characterization of service was General (under Honorable Conditions). Memorandum, Resignation in Lieu of Court-Martial, Exhibit 388. In the third case, AFOSI Report of Investigation, Exhibit 312, the subject allegedly sexually assaulted two female cadets on separate occasions. One of the victims was forced by the subject to place her hand on the subject's penis. She removed her hand at which time the subject again placed the victim's hand on his penis. When she removed her hand again the subject left her room. *Id.* The subject, in an intoxicated state (on a separate day), entered a different victim's room and asked the victim to help him to his room. When the subject and victim arrived at the subject's room, he grabbed the victim and aggressively kissed her. The subject removed his shorts and exposed his penis, and tried to push her to her knees; the victim told the subject not to push her and he stopped. After the victim refused the subject put her on the floor and lay on top of her. When the subject moved as though to perform oral sex, she said no and that she would yell if he didn't stop. He let her up and the victim left the room. *Id.* The subject received nonjudicial punishment and was

In the ninth case, command took no criminal action. Although the subject resigned in lieu of involuntary separation proceedings, we did not agree with the absence of criminal charges, based on the available information.<sup>1320</sup>

disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The subject was subsequently discharged. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The Academy recommended that the subject's discharge be characterized as Under Other Than Honorable Conditions. Memorandum with Recommendation for Characterization of Discharge, Exhibit 412. The Personnel Council recommended a discharge characterization of General (Under Honorable Conditions) with recoupment of his educational costs, which was approved. *Id.* and DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The fourth case, AFOSI Report of Investigation, Exhibit 343, involved a civilian female minor. The subject took the basketball the victim was holding and walked into a stairwell. The victim followed the subject into the stairwell. There, the subject touched the victim's breasts three times and attempted to kiss her. The victim elbowed the subject in the face and ran out of the stairwell. *Id.* The subject received nonjudicial punishment and was disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The fifth case, AFOSI Report of Investigation, Exhibit 393, involved multiple female cadet victims whose backs and shoulders the subject rubbed without their consent. This activity took place over the course of an academic year. During the course of rubbing the victims' backs and shoulders, the subject touched the breasts of two of the victims and the vagina of another victim. *Id.* Court-martial charges were initiated against the subject, but the Article 32 Investigating Officer recommended not proceeding to trial. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. Instead, the subject received nonjudicial punishment, however, the commander offering the nonjudicial punishment subsequently determined that there was insufficient evidence and withdrew the nonjudicial punishment. *Id.* The sixth case, AFOSI Report of Investigation, Exhibit 401, involved the subject entering into the female cadet victim's dorm room to have a conversation with her. The subject attempted to kiss the victim. The subject then touched the victim's breasts and attempted to kiss her breasts even though she told him "no" several times. *Id.* The subject received nonjudicial punishment and resigned in lieu of involuntary discharge. The characterization of the discharge was Honorable. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 381. The seventh case, AFOSI Report of Investigation, Exhibit 344, involved a female cadet victim who had been watching a movie and drinking with the subject. The victim went with the subject to his room. There the subject kissed the victim and then pushed the victim's head to his groin. The victim stated she performed fellatio on the subject because she was fearful. When the victim stopped performing fellatio the subject digitally penetrated her with what "felt like his fist." The subject then had the victim masturbate him. The subject then rolled the victim onto her stomach and anally penetrated her with his penis despite her protestations. *Id.* The subject received nonjudicial punishment and voluntarily resigned in lieu of a hearing before a Board of Officers. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The characterization of the discharge was General (Under Honorable Conditions). DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 382. The command accepted the subject's conditional voluntary resignation because the victim did not want to testify about the incident. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. The eighth case, AFOSI Report of Investigation, Exhibit 346, involved a female civilian minor. The subject was the guest of the victim's parents and was spending the night at the victim's home. During the early morning hours the father was awakened and saw the victim leaving the restroom. The father confronted the victim who denied anything was wrong. The father then confronted the subject who told the father that he and the victim had engaged in "heavy petting" while both were fully unclothed. The subject denied engaging in sexual intercourse. *Id.* The subject received nonjudicial punishment and was disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The subject was subsequently discharged and the Air Force Personnel Council concurred with the Superintendent's request that the subject's service be characterized as Honorable. Memorandum, Re: Cadet Disenrollment, October 13, 1995, Exhibit 377.

<sup>1320</sup> Subject and a female cadet victim had the same sponsor and were both staying overnight at the sponsor's residence. At approximately 1:00 a.m. the subject awoke and began thinking about the victim who was sleeping in another bedroom. AFOSI Report of Investigation, Exhibit 348. According to the subject, he got out of bed and went to the bathroom. Afterwards, being in a sexually excited state with a semi-erect penis the subject went to the room the victim was sleeping in. *Id.* Subject tried to wake the victim by touching her and saying her name, but the victim did not wake. *Id.* The subject then began to kiss and caress the victim's body and the victim awoke. *Id.* The subject continued to caress the victim, placing his hands on her covered breasts. The subject asked the victim if she wanted to do anything and the victim stated "no." *Id.* The subject continued to caress the victim in an attempt to sexually arouse her. The subject noticed the victim's body was tense and that she was holding an oriental sword between her legs to stop his

In summary, of the forty-three cases considered, we disagreed with the reasonableness of the criminal disposition of one case. We questioned, but could not form an opinion on, four others. Although there were cases where we would have favored use of formal criminal processes to resolve close factual issues, disciplinary action generally appeared to be within reasonable boundaries of discretion. We did not attempt to assess the reasonableness of characterization of discharge.

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advances. *Id.* The subject continued by kissing up and down the victim's stomach area to her pubic area. *Id.* As he continued to caress her on two or three occasions he placed his hand on her vagina by coming up from behind her where the sword was unable to block his advances. The victim attempted to block subject's advances, but he managed to insert a finger into her vagina. *Id.* The victim's statement was consistent, including her refusals to the subject indicating her unwillingness to participate. *Id.* In making the decision whether to pursue criminal charges, the command considered the fact that the subject's sponsor, at whose home the incident occurred, gave the subject a glowing character statement. The sponsor was less than laudatory on behalf of the victim. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. In addition, the command questioned the sufficiency of the evidence. *Id.* The subject voluntarily resigned from the Academy, with a General (Under Honorable Conditions) service characterization. Secretary of the Air Force Action on Cadet Disenrollment, Exhibit 380.

## **VII. Findings and Conclusions**

The Working Group found no systemic acceptance of sexual assault at the Academy, institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to encourage reporting, avoid incidents of sexual assault and support victims. However, the Working Group also found the focus on sexual assault issues had varied over time and lessened in recent years, and a number of culture and process matters are problematic. Collectively, they produced a less than optimal environment to deter and respond to sexual assault or bring assailants to justice. They demonstrate work that needs to be done to ensure that victim support and institutional values are consistently addressed. Listed below are a series of findings and conclusions regarding particular aspects of the Academy processes and related matters that the Working Group found to be significant. Recommendations follow. As explained at the beginning of the Report, individual cases and complaints were referred to the Air Force Inspector General for investigation and will be resolved in those channels.

1. The Academy has used a unique definition of "sexual assault" since at least 1997, and particularly since 2000, in its sexual assault deterrence program and in its reporting and training processes. This definition, which was expansive and not linked to specific crimes, was susceptible to misinterpretation, may have caused confusion regarding issues of consent, and may have created incorrect perceptions of the law and unrealistic expectations in victims about command and legal abilities to take adverse actions against assailants. As most allegations have been reported only to the Cadet Counseling Center and have contained little detail, it is not possible to ascertain whether many reported allegations would have met ordinary criminal concepts of sexual assault.
2. Since 1993, the Academy has provided an extensive program to deter and respond to incidents of sexual assault. Over the years, the program has grown considerably, providing counseling, medical, and other services to victims. It has incorporated the use of cadet volunteers, as well as trained victim advocates, to provide Hotline and referral services. While this Academy-unique program has provided valuable services, in some instances because of its victim-controlled, confidential process it has impaired communication among victims, investigative agencies, legal personnel, and command.
3. Since 1993, the Academy's sexual assault support program has offered limited confidentiality to victims to encourage reporting. This has provided victims the opportunity to seek assistance while allowing them to significantly control the information they provided, including, to a great extent, whether their own identity and the identity of their assailant would be passed on to command and investigative agencies. This practice precluded command and investigative organizations from having access to some information that may have resulted in the timely investigation and prosecution of assailants. Further, it suggested to cadets that command could not be trusted to respond appropriately, a concept antithetical to military principles and the training of future military leaders.
4. Beginning in 1993, the Academy instituted a process whereby cadets could receive "amnesty" for cadet infractions associated with the activity leading to or a part of a sexual assault. In 1997, this process was incorporated in the Academy Instruction pertaining to sexual assault. The purpose of offering amnesty was to encourage victims to report offenses by reducing their fear of being

punished for infractions related to the assault (e.g., alcohol violations). Its application to victims and witnesses was, by design, discretionary; however, it was not well understood by cadets or leadership, and uncertainty as to its efficacy reduced any effect it may have had in encouraging reporting.

5. By 2002, the Sexual Assault Services Committee, the group since 1995 charged with oversight and coordination of responses to sexual assault, was meeting less often, was poorly attended, and had become more of a pro forma activity compared to earlier practices. It was not effectively engaging all the components responsible for deterrence of and response to sexual assault.

6. Responsibilities for the overarching DoD and Air Force-prescribed Victim and Witness Assistance Program were not being fulfilled through the designated legal office, nor were all the parties responsible for the sexual assault program represented in the overarching program. Similarly, some of the agencies required by the overarching program for the delivery of victim services were not represented on the Sexual Assault Services Committee, nor were they receiving required training. Consequently, effective coordination of victim requirements across all responsible entities, and advice to victims regarding some of their entitlements, were missing, including consistent advice on the investigative and legal processes.

7. Since 1993, the Academy has increasingly provided training with the objective of deterring sexual assault, supporting victims, developing good character, and having proper human relations. However, there is little in the sexual assault training program itself that directly addresses the importance of good character in relation to deterrence of sexual assault, and there are some concerns about the timing of Fourth-Class cadet sexual assault training.

8. Academy programs related to sexual assault and sexual harassment have been conducted under different mission areas (the Dean of Faculty and the Commandant, and 10<sup>th</sup> Air Base Wing) and have not been effectively integrated.

9. Perceptions exist at the Academy that the Air Force Office of Special Investigations is unfriendly to victims. Regardless of whether the perceptions are based on fact, these perceptions can chill victims' willingness to report sexual assaults to this primary investigative agency. Statements and attitudes of victim support personnel at the Academy may have inadvertently contributed to these perceptions.

10. Chaplains have been a source of assistance to victims of sexual assault at the Academy, but they do not receive special training in this area. While maintenance of strict confidentiality for qualified communications with chaplains is required, communication of non-individual-specific information to command to assist in overall awareness of problem areas could be helpful, and chaplains could encourage victims to report allegations.

11. While providing medical services for victims of assault at the Academy Hospital and Cadet Clinic, the Academy has made use of the specialized rape protocol/rape kit services available at Memorial Hospital in Colorado Springs, Colorado. This has ensured that these services that require specialized forensic training, specialized equipment and maintenance of nurse practitioner skill levels through frequent practice, are provided in accordance with acceptable standards.

12. The Academy sexual assault program, at least since 1997, relied upon a 1997 Air Force Surgeon General waiver to the Air Force Instruction that requires medical personnel to report sexual

assaults to law enforcement. This waiver was subject to review after one year, and expired on July 1, 1998, with no indication a follow-on review was sought.

13. Lack of feedback to cadets and others at the Academy about sexual assault cases has left them largely uninformed about current sexual assault issues at the Academy. Lack of feedback to alleged sexual assault victims about discipline of offenders may cause some victims to lack trust and confidence in command and in the Academy's process to respond to allegations of assault. Privacy Act concerns, as expressed by legal counsel to commanders, have driven decisions of what information could be released.

14. Sexual assault at the Academy often involves the use of alcohol (40% of cadet-on-cadet investigated allegations). Intoxication and alcohol in the dormitories are reported to be significant issues.

15. Though there are few details on many of the sexual assault allegations at the Academy, of the allegations investigated in which details were identified, there is a recurring scenario. In the majority of the known allegations, the alleged assailant and the victim were acquaintances or friends and had been involved in some consensual social interaction either among themselves or within a group. A significant number of the allegations also involved the use of alcohol either by the victim, alleged assailant, or both. Additionally, a significant number of cases involved some consensual sexual activity prior to the alleged assault.

16. While unacceptable at any level, the number of alleged assailants represent less than one percent of the male cadets at the Academy over the last ten years. About half of the investigated allegations have not produced evidence sufficient for military justice action.

17. Fear of discipline and its effects on cadets' careers, peer ridicule, ostracism and reprisal, loss of privacy and loss of reputation are factors bearing on cadets' reluctance to report sexual assault.

18. A climate among cadets of inappropriate, gender-based comments about women and other forms of sexual harassment persists at the Academy. While this climate appears to affect a significant number of women, it may vary among squadrons. The actual extent and severity of the problem is not reliably known nor is its affect on sexual assault understood. Air Force Military Equal Opportunity Programs, including assessment programs, have not been fully applied to the cadet population.

19. Since at least 1993, there has been a tendency for cadets to place loyalty to peers above loyalty to values, resulting in toleration of behavior associated with sexual assault, such as toleration of violations of alcohol restrictions, cadet fraternization, and sexual activity in the dormitories. Misplaced loyalty to peers has been a matter of official concern at the Academy for many years and it remains a concern, including the extent to which it may be encouraged by Basic Cadet Training and the cadet authority structure.

20. The cadet authority structure, and the fact or perception of the relatively powerless position of Fourth-Class cadets (freshmen), as well as the circumstances of Basic Cadet Training, appear to be factors in some sexual assault allegations. (Fourth-Class cadets were disproportionately represented as alleged victims.) The timing of sexual assault and personal rights training (when cadets are overwhelmed during their intensive indoctrination process), and lack of clarity regarding Fourth-

Class cadets' right to deny upper class cadets' access to their rooms at inappropriate times, can make Fourth-Class cadets more vulnerable to upperclassmen who may abuse power.

21. Cadet leadership is a vital aspect of overall leadership at the Academy, and it is the leadership element in closest proximity to potential victims and assailants. Consequently, solutions regarding sexual assault and gender bias must feature cadet leadership's (and Cadet Wing's) acceptance of responsibility for standards, enforcement of standards, prevention of sexual harassment and peer reprisal, as well as taking active responsibility for their subordinates' welfare.

22. The Academy does not include leadership classes as a mandatory academic area, nor is attendance at the Center for Character Development programs a requirement for graduation or commissioning.

23. There has been no Academy-wide mentoring program for women or men that would assure an informal support structure for individual cadets, particularly Fourth-Class cadets (freshmen) who need it most. Personal support for Fourth-Class cadets has been inconsistent across the Academy community.

24. Although a study of methods for measuring character development has begun at the Academy, there is currently no process in place to reliably measure character development.

25. Although not the case when women were first admitted to the Academy in 1976, women's dormitory rooms have since been intermingled with men's rooms in their squadron dormitory areas. This is not consistent with Air Force housing instructions or Air Force practice. Further, women's bathrooms have been at a distance from many of the women's rooms causing them to travel the halls for some distance in robes or athletic attire.

26. Until January 2003, officer and noncommissioned officer presence in the dormitories at night was not extensive. Since that time, arrangements have been made to provide significant officer and noncommissioned officer presence throughout nighttime hours.

27. From at least 1993 forward, deterring and responding to incidents of sexual assault was a focus for command personnel. However, this direct focus appeared to gradually lessen after 1997, due in part to competing demands.

28. During the last Commandant's administration, due to a combination of the evolution of Academy practices, misunderstandings about the Commandant's role and competing demands on the Commandant's time, he was less involved in the sexual assault processes than recent predecessors had been. The Commandant sought, as had a prior Commandant, to have the sexual assault program within the Cadet Counseling Center brought under his command (as it had been until late 1996 when it was moved under the Dean). However, the Commandant was not able to persuade others, including the Superintendent, to support the realignment.

29. In pursuit of a mandate from the former Chief of Staff of the Air Force to tighten cadet standards at the Academy, the last Commandant, and particularly his Training Group Commander, had become perceived by many as focused on discipline, although the disciplinary levels were not inconsistent with historic levels, nor as severe as the perception. A poor working relationship among the Academy mission elements led to a decline in communication and coordination among

the various components of the Academy necessary to effectively respond to allegations of sexual assault suffered.

30. In at least one case in 2002, the Training Group initiated disciplinary processes for infractions against a cadet who alleged sexual assault, based upon alleged infractions by the victim known to command independently of the sexual assault allegation. While the commencement of the discipline process is not technically the imposition of discipline itself, and punishment was not in fact imposed, such action created an appearance among some that leadership was more interested in discipline than support of victims. This perception served to erode cadet trust and confidence in the Academy's sexual assault response processes and made the victim feel punished.

31. A review of investigated allegations by members of the Working Group's staff team experienced in military justice indicates that Academy's disposition of cases over the last ten years has generally been within reasonable boundaries of discretion, but also suggests that the Academy community might benefit from greater consideration of the use of formal criminal processes in close cases.

32. The Academy's leadership deemed the command experience and qualifications of Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) inadequate to provide the best leadership and role models for cadets. In recent years, assignment procedures have not allowed for individual selectivity in filling these key positions. An earlier Masters degree program to provide AOCs with the skills needed for the job was terminated. Although improved under the last Commandant, training for AOCs and MTLs has not been extensive.

33. In the Air Officer Commanding positions, the assignments that provide the best opportunities to model professionalism and officership for male and female cadets, the presence of women has been minimal in recent years.

34. Attendance at CAPSTONE and other non-Academy duties has, at least for the past three Commandants, caused them to be away from their duties at the Academy for significant periods of time.

35. A Social Climate Survey was conducted by the Academy covering gender climate and alcohol abuse from 1992 to 2002, and covering sexual assault since 1996, but the usefulness of the results and the adequacy of the surveys were questioned and the results were not consistently provided to command.

36. There is no single entity responsible for developing and assessing the results of the Social Climate Survey. Over time, the Academy parsed responsibility for various discrete parts of the survey between the Center for Character Development (which falls under the Commandant) and the Cadet Counseling Center (which falls under the Dean), leaving the overall survey without a single entity to ensure quality, assessment, trend monitoring or dissemination to leadership. Sexual assault survey results were not provided to command for 1998, 2000, or 2001; sexual harassment results were not provided for 2000 and 2002; and alcohol results do not appear to have been provided since 1996.

37. In addition to the lack of awareness and communication pertaining to the Social Climate Surveys, the Working Group identified problematic aspects of the construct, administration, and

assessment of the surveys. The perception by some mid-level Academy personnel of these problematic aspects appears to have contributed to their decisions not to rely upon or make leadership aware of the survey results.

38. Although the sexual assault questions in the surveys were not of desirable quality, particularly to allow a comparison of changes over time and to assess whether the reported assaults were actually connected with the Academy, in some cases they did provide some information indicating that sexual assaults as defined at the Academy against cadets may be occurring in greater numbers than was reported to the Cadet Counseling Center.

39. Although the Academy recently initiated measures to improve the survey instruments to assess sexual assault and related matters, at present there are no adequate means of reliably measuring sexual assault or gender climate over time.

40. The Working Group found no consistent mechanisms in effect at the Academy for reliably comparing Academy sexual assault data with other academies, civilian schools or other institutions. The Academy's unique definition of sexual assault and its unique confidential reporting process make reliable comparisons difficult. Data was not available to compare the Air Force Academy to other service academies.

41. Activities of the two legal offices at the Air Force Academy as they pertained to cadet misconduct have not been formally delineated. Different legal offices handled different aspects of a case, leaving the potential for incomplete, inconsistent or uncoordinated legal advice. There are three separate special court-martial convening authorities at the Academy, providing the potential for inconsistent treatment of similar offenses among the cadets, faculty and support communities.

42. The Working Group was unable to obtain some records that showed the rationale for disposition of allegations when criminal charges were not pursued. While there was no requirement for the Academy to create such records in some cases, or maintain such records beyond their normal file disposition dates, this left questions unanswered.

43. Permanent party personnel have tended to serve recurring and/or extended tours of duty at the Academy and a significant proportion, particularly in senior leadership roles, are Academy graduates. While some stability is desirable in an academic environment, these circumstances can lead to isolation from the Air Force, complacency and diminished current, operational perspectives.

### **VIII. Recommendations**

The Working Group recommends the following:

[Note: Where marked with an asterisk (\*) the recommendations are ones made, in whole or in part, in the March 19, 2003 Memorandum from the General Counsel to the Secretary and Chief of Staff of the Air Force, which included preliminary findings of the Working Group. Recommendations marked with two asterisks (\*\*) are ones that have been addressed in whole or in part, in the “*United States Air Force Academy -- Agenda for Change*” memorandum, issued by the Secretary and Chief of Staff on March 26, 2003.]

1. Conform Academy definitions of sexual assault, and policy and processes regarding the reporting and investigation of sexual assaults to Air Force definitions, policy and processes with sexual assaults immediately reported to command. In connection with this, modify Academy training and training materials to conform to Air Force practice. \* \*\* [The Secretary has requested the General Counsel to assist in the development of clear definition of terms.]
2. Effectively integrate all Academy agencies charged with responding to sexual assault, (including the “Academy Response Team” or “First Responder Team” required by the *Agenda for Change*)\* \*\* using the Air Force Victim and Witness Assistance Program (VWAP) as the overarching process. Meld the cadet counseling and Sexual Assault Services Committee processes with the VWAP process. Ensure the First Responder Team is immediately called when there is a report of an allegation of sexual assault. Provide the Academy community with detailed information on how victim support will be assured. The First Responder Team should include medical, legal, AFOSI, Security Forces, Cadet Counseling Center and Air Officer Commanding representatives. \*\* Under normal circumstances, AFOSI should be responsible for the collection and proper handling of all evidence in connection with a sexual assault investigation.
3. Provide extensive training in sexual assault matters, including victim psychology, psychological profiles of offenders, predatory behaviors, victim support and advocacy to all those who will serve as part of The First Responder Team, including the AFOSI, lawyer representatives and Air Officers Commanding. \*\* Ensure similar training is provided to Military Training Leaders, chaplains, prosecutors, and investigative personnel, and provide for this training to be repeated as necessary as personnel changes.
4. Recognizing that the *Agenda for Change* ended the Academy’s unique confidential sexual assault reporting processes, it will be important to provide in their place substantial victim support that continues to make victim support a high priority. Involve the command structure closely in that victim support and protect the privacy of victims. \* \*\* Preserve the positive aspects of the Academy’s program that are consistent with the *Agenda for Change* (to the extent allowed by law) and actively address victims’ reluctance to report sexual assault.
5. In all reported cases of sexual assault, provide amnesty to victims and others consistent with the *Agenda for Change* \* \*\* Clarify the applicability of “amnesty” for victims of sexual assault, addressing the scope of infractions that may be covered (recognizing that cadet discipline is sometimes substituted for criminal sanctions ), the extent to which conduct antecedent to the particular events of the assault may be covered (e.g., whether a pattern of minor misconduct over

time leading up to the assault may be excused), whether amnesty would preclude consideration of the underlying conduct for commissioning purposes, and, short of disciplinary action, what appropriate command action may be taken (such as counseling). In situations where amnesty does not apply, whenever feasible, defer initiation of discipline for a person alleging sexual assault until the sexual assault issues are resolved.

6. Train Counseling Center personnel, including counselors, cadet volunteers and victim advocates on the law concerning definitions of the crimes constituting sexual assault and the issue of consent, and have them refer victims' questions about what may be assault or consent to the judge advocate advising the Vice Commandant.
7. Increase the frequency and effectiveness of sexual assault deterrence training (not just victim support and sexual assault avoidance training), emphasizing small groups, cadet participation, \* and a focus on character, including the ethical use of power, as the principal deterrent to sexual assault. Encourage integrated cadet, faculty and staff interactions on character issues related to sexual assault on various levels, not solely formal training. Establish measures of merit to determine effectiveness.
8. Provide Air Officers Commanding and Military Training Leaders with resources and assistance in making sexual assault deterrence and response an integrated part of squadron training, and prepare them to deal effectively with reports of sexual assault and related issues.
9. Reevaluate the *Agenda for Change* decision to use Academy medical resources to provide rape protocols. While keeping Academy medical personnel involved in patient care, integrate them with the specialized rape protocol services at Memorial Hospital to ensure the use of trained forensic personnel who are able to maintain appropriate levels of currency and training in these specialized procedures by means of frequent and regular practice.
10. Clarify in Air Force directives that Cadet Counseling Center personnel, and others associated with the Sexual Assault Program, are required to report sexual assaults to command and the Air Force Office of Special Investigations.
11. While safeguarding chaplain confidentiality, ensure chaplains are fully integrated in the sexual assault deterrence and response processes, including integration of non-confidential information into sexual assault assessment methods.
12. Provide feedback to victims of sexual assault on case dispositions to the maximum extent allowed by law. Provide consistent feedback to the Cadet Wing, faculty, and staff on disposition of discipline cases to the maximum extent allowed by law. \* \*\* [The General Counsel has been instructed by the Secretary of the Air Force to revise Air Force and Academy instructions to provide for the maximum dissemination of information allowed by the law.]
13. Evaluate current standards regarding the use of alcohol. \* Consistently track alcohol problem indicators and make the information available to command. Take appropriate action to deter alcohol violations, particularly regarding misuse of alcohol and underage drinking. Ensure continuing viability of Academy programs to address alcohol abuse prevention.
14. Aggressively employ all means available to eliminate sexual harassment and gender bias, including the resources of the 10<sup>th</sup> Air Base Wing Military Equal Opportunity Office. Consider

realigning this office under the Superintendent, from the Air Base Wing, to improve cadet access and to emphasize senior leadership interest. Comply with Air Force Military and Equal Opportunity and Treatment Program requirements.

15. Reinforce, repeatedly and Academy-wide, the importance of loyalty to values over loyalty to peers. Teach the concept of "earned" loyalty so that when a peer violates expected conduct and imperils the unit, loyalty to the unit outweighs loyalty to that peer. \* \*\*

16. Reevaluate the cadet rank structure and the fourth-class system to reduce the potential for abuse of subordinate cadets, with a particular view to safeguards to protect Fourth-Class cadets from behavior by those who may seek to take advantage of their relative lack of power. \* \*\*

17. Engage cadet leadership in planning and executing measures to build and institutionalize loyalty to values above peers, and assured victim support free of fear of peer reprisal.

18. Clarify and continually emphasize to all cadets (especially those in leadership positions over Fourth-Class cadets) the ethical use of power in leadership roles and the Fourth-Class cadet's right to say "no" to inappropriate requests or demands from superior cadets. \*

19. Establish formal support structures for Fourth-Class cadets, i.e., a formal mentoring program, in which upperclass cadets would be responsible for the welfare of their respective Fourth-Class cadets, as well as other mentoring opportunities. \* \*\*

20. Make leadership classes part of the mandatory academic curriculum of the Academy, and make successful participation in character development programs requirements for graduation and commissioning. \* \*\*

21. Establish effective mechanisms, including interim measures, by which Academy and Air Force leadership can assess the progress of character development at the Academy, \* \*\* and assess cadets' character prior to commissioning.

22. Conduct assertiveness evaluations of Fourth-Class cadets and, where indicated, provide assertiveness training.

23. Adjust room assignments to enhance mutual support of female members, particularly female Fourth-Class cadets (freshmen), while preserving squadron integrity. \* \*\*

24. Ensure continued nighttime officer and noncommissioned officer leadership, oversight and supervision in the dormitories. \* \*\*

25. In addition to case-by-case command and legal determinations, ensure that all decisions regarding discipline, disenrollment and discharge are reviewed in the aggregate at least semi-annually to examine disposition trends and their appropriateness. To this end, and to facilitate explanation of deviations when necessary, insure that decisions and the rationale for them are documented and retained.

26. Reduce the demands on the Commandant that may cause him or her to be absent from the Academy for extended periods of time including absence for CAPSTONE, and/or consider raising the rank for the position to major general.

27. Implement highly selective assignment processes for Air Officers Commanding and Military Training Leaders, and enhance training for them to provide the best leadership and role models for the cadets. Reinstate the Masters educational program for AOCs. \* \*\*
28. Consider appropriate measures to increase the number of female AOCs, MTLs and others in leadership positions at the Academy, and to provide increased opportunities for role modeling of successful female officers for the benefit of male and female cadets. \* \*\*
29. Establish effective mechanisms by which Academy and Air Force leadership can measure and monitor sexual assault and related gender climate trends, \* \*\* and validly compare them to relevant organizations such as other military academies and appropriate civilian institutions. Ensure proper construct, administration, and assessment of the surveys, including consultation with Air Force experts beyond the Academy. Establish a long-term plan to measure longitudinal comparisons of survey results. Specifically, develop surveys that over time will reliably measure the extent and nature of sexual harassment and assault.
30. Ensure that a single Academy leader (either the Dean or the Commandant) is directly responsible for receiving, assessing and informing the Superintendent and all Academy leaders of results from all aspects of the surveys and other statistics on sexual assault. Provide survey results, statistics and analysis, to the Secretary of the Air Force and the Chief of Staff annually.
31. Make use of standard Air Force Unit Climate Assessment tools within the Academy's Training Wing, including cadets, to provide comparative data and insights to Command.
32. While retaining the general court-martial convening authority of the Superintendent, reduce the three special court-martial convening authorities at the Academy to a single special court-martial convening authority for the entire installation to encourage consistency across all cases. \*
33. Consolidate the Academy legal office and the 10<sup>th</sup> Air Base Wing legal office into a single legal office at the Academy, providing integrated legal services to the Academy and across all legal issues related to cadets.
34. Review adequacy of physical security arrangements for the cadet area to maximize cadet security. \*
35. Review the appropriateness of permanent party recurring tours at the Academy, cumulative time on station and commission sources. \* \*\*
36. Conduct a review of Academy manpower to determine whether manning levels are adequate to ensure the effective operation of key processes.

## **IX. Areas Recommended for Further Study**

In the course of conducting this review, the Working Group encountered a number of areas that were beyond the scope of our activities or for which time did not allow adequate study, and did not result in specific recommendations, but merit further study and, potentially, recommendations for command action. They are listed below.

1. **The Extent to Which Academy Processes Differ from Air Force Processes.** There are many aspects of cadet life that are different from ordinary Air Force life. Among them are the cadet disciplinary process, cadet performance evaluations, and cadet rules of conduct. Some interviews suggested that the Academy processes in some respects train cadets to be cadets, rather than to be officers. It seems worthwhile to critically examine the entire cadet experience using as a measure the extent to which any given process differs from Air Force processes or standards, the degree to which that is justified, and whether the justification warrants continuation of the difference. A related analysis would be whether, to the extent the differences are warranted, they should be continued throughout the cadet experience or whether they should be exchanged for Air Force processes as the cadet progresses in the cadet career. (See, among other sources, the interview of Maj Gen (sel) Welsh, former Commandant.)
2. **Review for Commissioning Suitability.** The Academy's Character Development Review Panel, in its July 2002 report, noted the panel members' belief that there are identifiable cadets who, although not necessarily in overt difficulty have persistent negative or marginal attitudes or behavior that may not suit them for commissioning. The panel suggested implementation of processes to screen cadets for commissioning suitability before they move from the sophomore year to the junior year and incur a service commitment. Lieutenant General Hosmer's interview also reflected the need to review cadets for worthiness of commissioning in the final year. Consider implementation of this concept, as well as other measures to ensure that cadets meet the highest standards for commissioning. In doing so, consider making distinctions between suitability for commissioning and graduation, allowing greater discretion in awarding a degree where commissioning may nonetheless be inappropriate, and declining to commission the cadet.
3. **Fourth-Class System.** Consideration of the viability and utility of the Fourth-Class cadet/ "doolie" training approach in present times may be warranted. Questions include whether the current system is the one best suited to prepare cadets to be officers; whether the duration of the "doolie" period is too long or could be shortened to good effect; and whether treatment of cadets during the "doolie" period should be modified. In doing so, consideration of the processes in effect at the other Service academies, civilian military academies, as well as Air Force Basic Military Training, Air Force Reserve Officer Training Corps, and Officer Training School may be of value. In addition, consider giving greater freedom to make decisions (and mistakes) to more senior cadets in order to enable them to demonstrate responsibility (or lack thereof) for suitability of commissioning.
4. **Preparatory School.** The Working Group did not examine the status or processes pertinent to sexual assault at the Academy Preparatory School. A separate examination by the Academy would be well advised to ensure that lessons learned are carried over to that environment.

5. Interface of the Athletic Department with the Training Wing. In the course of our inquiry, we received repeated comments regarding perceptions of different standards for intercollegiate athletes and inconsistencies between adherence to cadet rules in the athletic areas and in areas under the Training Wing. While the *Agenda for Change* places the Athletic Department under the Training Wing, this aspect of treatment of athletes versus other cadets remains worthy of further study, including ways to communicate to cadets and other Academy personnel the facts relevant to any justifiable differences, as perceptions alone can undermine the effectiveness of the cadet training environment. We note that an on-going General Accounting Office study expected in September 2003 may be of assistance.

6. Relative Tours of Duty of Senior Leadership. In recent years, Commandants have served one to three years in the position, while the Athletic Director and the Dean have been in place for many more. The extent to which the dissimilar periods of longevity impact relations between the mission areas, and any "asymmetric disadvantage" this may produce for the interests of the Training Wing, as well as the turbulence frequent rotations of the Commandant produce for the other mission areas, appear to merit consideration.

7. Faculty Members. There is some concern that some faculty members at the Academy may not understand the need to treat females in an equal manner and that some faculty members may adopt an academic attitude that is not consistent with training military officers. The selection, orientation, and retention of faculty should be examined to assure they are contributing to the goals of the Academy and the Air Force in the training of tomorrow's officers.

8. Character Evaluations of Prospective Cadets. It appeared from superficial inquiry that the Academy's means of assessing the character and suitability for military life and future commissioning of prospective cadets during the admissions process are somewhat limited, and turn largely on limited interviews by Academy liaisons. Whether this is an issue, and if so the means by which it may be addressed (including the usefulness of psychological testing) warrants further inquiry.

9. Security Forces Involvement in Cadet Security. Assess the adequacy of Security Forces involvement in the cadet area.

10. Other Commissioning Sources. We recognized when the study began that there is a need to examine sexual assault issues at the other Air Force commissioning sources (Officer Training School and Air Force Reserve Officer Training Corps). This remains to be done, and should be done.

11. Board of Visitors. The Board of Visitors consisting of members of the Senate and House of Representatives, as well as Presidential appointees, constituted by 10 U.S.C. § 9355, is charged with inquiring into morale, discipline, and other matters at the Academy. A brief review of information provided to that Board since 1993 indicates that an examination of the means of keeping the Board informed, particularly on matters related to sexual assault, may be warranted.

12. Air Force Headquarters. Consider to what extent the Headquarters Air Force has been and should be involved in the oversight of the sexual assault and sexual harassment issues in the Air Force, including the Academy.

## **Appendix A**

### **Relevant Reports**

#### **1. General Accounting Office Reports**

On three occasions between 1993 and 1995, the General Accounting Office conducted assessments and prepared reports relevant to the issues of sexual harassment and/or sexual assaults at the Academy. These GAO reports addressed gender and racial disparities as well as sexual harassment. They also contained detailed findings supported by statistical analysis, commentary on the relevant issues, and recommendations for improvements. Starting as early as the September 1993 report, the GAO noted deficiencies in the collection, storage, and analysis of pertinent data at the Academy, which hampered its ability to conduct a meaningful assessment. The report said, "(d)uring our own work, we encountered time-consuming difficulties in collecting needed performance indicator and adjudicatory data because the Academy has no standardized, consolidated data base."<sup>1321</sup> The Working Group's staff team experienced the same difficulties and frustrations during its work nearly a decade later.

#### **September 1993 Report**

In 1993, the Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel asked the GAO to examine the treatment of women and minorities at the military academies. The GAO reported on disparities at the Air Force Academy in September 1993, and addressed differences in performance indicators between men and women and between whites and minorities, cadets' perceptions of the fairness of the treatment of female and minority cadets, and specific actions the Academy had undertaken to enhance the success of women and minorities.<sup>1322</sup>

The 1993 Report found the Academy had taken a number of steps to address issues affecting women and minorities in the preceding years. For example, the Academy required that all cadets complete courses in human relations and created several councils and committees to offer guidance and counseling to cadets on appropriate treatment of women and minorities. In 1992, the Academy's Department of Behavioral Sciences and Leadership administered a survey of attitudes and behaviors toward sexual harassment and racial discrimination. About 3,900 of the Academy's 4,400 cadets participated in the survey. In February and March 1993, the Defense Equal Opportunity Management Institute visited the Academy, conducted an assessment, and made recommendations to improve its human relations climate. The team found that the overall human relations climate was good, but commented, "(t)he existence of sexist and racist behaviors (e.g., jokes and racially derogatory remarks) if left unchecked could eventually detract from the Academy's mission."<sup>1323</sup> Finally, on May 20, 1993, the Academy's Ad Hoc Committee on Respect

<sup>1321</sup> GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43 at 51.

<sup>1322</sup> Congress authorized the creation of the Air Force Academy in 1954. It has admitted minorities since its inception, but women were not allowed to attend until 1976. Approximately twelve percent of the cadets in the class of 1993 were women. GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43 at 2.

<sup>1323</sup> *Id.* at 49. The GAO considered the findings of the Defense Equal Opportunity Management Institute's assessment in making its determinations. *Id.*

and Dignity issued a report recommending significant human relations initiatives. This included a recommendation to establish an Office of Character Development to serve as the focal point for developing a master plan for cadet character development.<sup>1324</sup>

The GAO recommended that the Superintendent:

- Develop a relational database capability allowing routine analysis of key performance indicators;
- Establish criteria for assessing when disparities warrant more in-depth attention and corrective action; and
- Prepare (1) a plan of action and milestone documents to track actions taken in response to problems revealed through studies or surveys and (2) specify measures with which to assess the effectiveness of the Academy's actions over time.<sup>1325</sup>

#### January 1994 Report

In 1994, the GAO, at the request of the Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel, undertook a review of sexual harassment of cadets at the Air Force, Naval, and U.S. Military academies.<sup>1326</sup> The objectives of the review were to determine the extent to which sexual harassment occurred at

<sup>1324</sup> *Id.* at 49-50. The Academy created the Center for Character Development to address a variety of character-related issues, including sexual assault. Statement of Lt Gen Hosmer, Exhibit 45, at 25-26. The current Dean of the Faculty was instrumental in the development of the Center and served as the Center's Director from 1994 to 1996. Statement of Brig Wagie, Exhibit 198 at 44-46.

<sup>1325</sup> GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43, at 52. The Working Group found no formal response by the Academy to implement the GAO recommendations and the recommendations contained herein are similar in some respects to those of the GAO in 1993. While the current Dean of the Faculty said he was certain the Academy provided responses to GAO reports, the Working Group did not find any response. Statement of Brig Gen Wagie, Exhibit 209 at 25. Lieutenant General Hosmer discussed the GAO study, but he did not indicate if the Academy submitted a written response. Statement of Lt Gen Hosmer, Exhibit 45 at 5-6. Institution of the Academy Climate Surveys and the Center for Character Development appear to have been in response to the GAO Report concerns, although no records to this effect were found.

<sup>1326</sup> GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21. The definition of sexual harassment that GAO relied upon in conducting a series of surveys at the Academics varied slightly; however, the GAO definition was closely aligned with the DoD definition, which states:

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when:

- (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or
- (2) submission to or rejection of such conduct by a person is used as a basis for career employment decisions affecting that person, or
- (3) such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment."

See GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 24.

the academies, the forms it took, its effects on those subjected to it, and to evaluate the academies' efforts to eradicate sexual harassment.<sup>1327</sup> The report echoed a theme stated in the September 1993 report when it said, "(n)one of the academies has developed usable trend data to assess the effectiveness of its sexual harassment eradication program."<sup>1328</sup> Again, the GAO recommended the Superintendent develop a process to gather and analyze data on the extent of reported and unreported incidents of sexual harassment, and evaluate the effectiveness of sexual harassment eradication programs on the basis of the data.<sup>1329</sup>

The GAO review found that between one-half and three-quarters of academy female cadets experienced various forms of harassment at least twice a month. Female cadets said the basis for the harassment was most often gender, rather than race, religion, or ethnic origin. The harassment usually took the form of derogatory personal comments; comments that standards were lowered for women; comments that women did not belong at the academy; exposure to offensive posters, signs, graffiti, or t-shirts; and mocking gestures, catcalls, accents, or slang. Few female cadets reported unwanted pressure for dates or unwanted sexual advances.<sup>1330</sup>

Additionally, the GAO found that most sexual harassment complaints did not lead to a formal report of harassment. As an example, the GAO noted that between ninety-three and ninety-seven percent of female service academy cadets reported experiencing some form of sexual harassment during academic year 1991, but only twenty-six specific incidents were formally reported, and most of those involved serious forms of sexual misconduct.<sup>1331</sup> The typical reported behavior involved a male cadet entering a female cadet's dormitory room at night and making unwanted sexual advances (for example, kissing, touching, and fondling) toward the sleeping female cadet.<sup>1332</sup> Cadets said they perceived potential negative consequences to reporting an assault, such as receiving little support from the chain of command and peers, being shunned, and receiving lower grades on military performance.<sup>1333</sup> The GAO noted that female sexual harassment victims develop coping mechanisms, such as blocking out the incident, avoiding the harasser, making a joke to diffuse the situation, telling the harasser to stop the behavior, or threatening to file a complaint. Most victims simply wanted the behavior to stop rather than expressing an interest in seeing the offender punished.<sup>1334</sup> While a majority of female cadets thought a reported incident would be investigated and the offender punished, less than half thought their fellow cadets would support them.<sup>1335</sup> A substantial majority of both male and female cadets, seventy-three and eighty-five percent respectively, said a person who reported sexual harassment would be viewed as a

<sup>1327</sup> GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 2.

<sup>1328</sup> *Id.* at 3. The report noted in particular the failure of the Air Force Academy to conduct routine, systematic program evaluations and cautioned that "[a] disciplined evaluation approach is critical to determining whether current efforts to eradicate harassment are working or new efforts should be tried."

<sup>1329</sup> *Id.* at 5. As noted earlier, the Working Group did not find evidence of any significant effort to implement the GAO recommendations. See also, Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

<sup>1330</sup> GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 3.

<sup>1331</sup> *Id.* at 4, 26. The percentages were derived from surveying the 1,415 female cadets attending the three service academies at the time. The report did not state the actual number of female cadets that said they experienced sexual harassment, although it did give the number that formally reported harassment. *Id.*

<sup>1332</sup> *Id.* at 4.

<sup>1333</sup> *Id.* at 34.

<sup>1334</sup> *Id.* at 14.

<sup>1335</sup> *Id.* at 35.

"crybaby."<sup>1336</sup> Many of these same behaviors and attitudes were reported again a decade later in a January 2003 Academy survey on sexual assault reporting and treatment.<sup>1337</sup>

### March 1995 Report

In 1995, the GAO provided an update to its 1994 Report, comparing the results of their 1990-91 survey with the extent to which sexual harassment was reported to have occurred at the academies in the 1993-94 academic year, the forms it took, and the views of academy men and women on the consequences of reporting it.<sup>1338</sup> Similar to the previous findings, the majority of female cadets, seventy-eight percent, reported experiencing at least one form of sexual harassment on a recurring basis in academic year 1993-94, while the highest percentage of male cadets indicating exposure to some form of recurring sexual harassment was about eleven percent.<sup>1339</sup> The proportion of women at the Naval and Air Force academies who reportedly experienced some form of sexual harassment a couple of times a month, or more often, represented a statistically significant increase from the 1990-91 levels. As before, the most common forms of sexual harassment were verbal comments and visual displays.<sup>1340</sup>

The GAO concluded that the percentage of female cadets indicating they experienced at least one of the ten forms of sexual harassment on a recurring basis was seventy-eight percent at the Air Force Academy, a notable increase over the last survey of the cadets in 1990-91.<sup>1341</sup> Importantly, the GAO found a statistically significant decline in the number of female cadets who believed it likely that offenders would be appropriately disciplined. The percentage dropped from 68% in 1991 to 44% in 1994.<sup>1342</sup> Forty percent of female cadets indicated they would hesitate to report an incident of sexual harassment for fear of reprisal. This percentage did not significantly change from the earlier surveys.<sup>1343</sup> Again, a substantial majority of female cadets, seventy-five percent, said a victim who reported sexual harassment would be viewed as a "crybaby."<sup>1344</sup> One female cadet told the GAO, "I was assaulted and I am very displeased with the actions taken."<sup>1345</sup> The GAO concluded that, given that there had been no apparent change in the perceptions of female cadets regarding the negative consequences of reporting harassment, it was likely sexual harassment would continue to be underreported.<sup>1346</sup>

## 2. Character Development Review Panel Reports

### May 2000 Report

In March 2000, Lt Gen Tad Oelstrom, the Superintendent of the Academy at the time, convened a Character Development Review Panel to review the status of the Academy's character

<sup>1336</sup> *Id.* at 37.

<sup>1337</sup> Cadet Written Comments to Sexual Assault Reporting and Treatment Survey, January 2003, Exhibit 143, at 3-4, 7-18, 24.

<sup>1338</sup> GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 1.

<sup>1339</sup> *Id.* at 8.

<sup>1340</sup> *Id.* at 2.

<sup>1341</sup> *Id.* at 8. For a description of the ten forms of sexual harassment, see *id.* at 2.

<sup>1342</sup> *Id.* at 17.

<sup>1343</sup> *Id.* at 21.

<sup>1344</sup> *Id.* at 20.

<sup>1345</sup> *Id.* at 11.

<sup>1346</sup> *Id.* at 22.

development program.<sup>1347</sup> While the issue of sexual assault was not explicitly included in the panel's mandate, many aspects they considered in relation to character development have a direct relationship to the sexual assault issue. The panel met at the Academy on March 13-14, 2000.<sup>1348</sup> The panel's report was submitted to the Superintendent on May 27, 2000. Lieutenant General Oelstrom left the Academy in early June 2000. He recalls some verbal feedback on the report, but does not recall reading the report.<sup>1349</sup> Lieutenant General Dallager and Brigadier General Gilbert did review the report and the July 2002 follow-on report described below.<sup>1350</sup>

Several portions of the May 2000 report are pertinent to issues concerning sexual assault. First, the panel noted that strengthening cadet character is a complicated task and requires integration of all facets of the Academy, including close coordination between the faculty, Cadet Wing, and Athletic Department. The panel said, "(s)uch integration was not apparent to the Panel."<sup>1351</sup> Second, the panel observed that cadet loyalty to unit goals and ideals was weak while an unhealthy loyalty to classmates was extremely strong and began in Basic Cadet Training (BCT). The panel recommended attacking this problem as a "matter of urgency."<sup>1352</sup> One of the dangers of this misplaced loyalty, according to the panel, is a toleration of violations by fellow cadets. Third, the panel found too much emphasis on talking about character and studying examples of character rather than putting cadets in positions of responsibility and allowing them to learn from the results.<sup>1353</sup> Fourth, the panel said that the character development program was handicapped by the absence of any method for assessing results, despite indicators available to assess the strength of character of the Cadet Wing. These indicators included: acts of reprisal, poll data reflecting fear of reprisal, disciplinary rates, binge drinking, sexual misconduct (particularly involving abuse of authority), and other forms of abuse of authority.<sup>1354</sup> Finally, the panel noted that the character development program is an ambitious undertaking and will attract resistance and the incentive to "let it slide" will be ample.<sup>1355</sup> To counteract the negative impulses, the panel said strong command interest, particularly a repeated expression of expectations from the Superintendent, was the remedy.

### July 2002 Report

Lieutenant General John Dallager, the current Superintendent, invited the panel back for a follow-up assessment in 2002. Lieutenant General Hosmer again chaired the panel, which met in March 2002 and submitted its report in July 2002. The panel found that progress had been made in some areas, but other concerns they expressed in 2000 were not being addressed. One of the positive notes was the increased emphasis on giving cadets greater responsibility and authority by the Commandant, Brig Gen Gilbert. The panel reiterated its earlier statement that action carries more weight than words, saying, "(t)alk, compared to experience, is a secondary influence."<sup>1356</sup> The

<sup>1347</sup> The panel was chaired by Lt Gen Hosmer, former Superintendent at the Academy. Panel members were Mr. Sanford McDonnell (former CEO of McDonnell Douglass), Lt Gen Marcus Anderson, Maj Gen Richard Yudkin, Brig Gen Reuben Cubero, Brig Gen David Wagic, Brig Gen Mal Wakin, Col Michael DeLorenzo, Col Edward Rice, and Col James Dotson. USAFA Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 11.

<sup>1348</sup> *Id.* at 2.

<sup>1349</sup> Statement of Lt Gen Oelstrom, Exhibit 63, at 20-22.

<sup>1350</sup> Statement of Lt Gen Dallager, Exhibit 71, at 50 and Statement of Brig Gen Gilbert, Exhibit 10, at 92-93.

<sup>1351</sup> USAFA Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 3.

<sup>1352</sup> *Id.* at 4.

<sup>1353</sup> *Id.* at 5.

<sup>1354</sup> *Id.* at 7.

<sup>1355</sup> *Id.* at 9.

<sup>1356</sup> USAFA Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 5.

panel said continued attention to this initiative was needed to reverse the impact of many years during which cadet responsibility, authority, and accountability decreased.

The Panel offered suggestions in a number of areas relevant to the current inquiry. First, they urged the Character Development Commission, as the Superintendent's agent, be used with greater force. The panel observed that the role of the Commission was more collegial than executive, citing to the fact that actions were directed by the Commission but sometimes not carried out.<sup>1357</sup> The assignment of junior members to serve as representatives on the Commission was cited as further proof of this observation. Second, the absence of any method to assess results was a handicap. The panel found, nonetheless, that considerable information related to cadet character was currently available and noted that, "(t)he choice to downplay all available current objective information...appears indefensible."<sup>1358</sup> According to the panel, currently available data, if assessed with appropriate skepticism, could produce useful information to guide refinement of character development. Third, the panel addressed the role of Air Officers Commanding as role models with an outsize impact on cadets' behavior. The panel reviewed the Academy's response to this finding, and noted the absence of any reference to the selection and preparation of AOCs was a "revealing omission" that "tends to confirm the suspicion voiced elsewhere that the Commandant's organization is not a full participant in the Academy's integrated character development program."<sup>1359</sup>

### 3. The Defense Equal Opportunity Council (DEOC) Task Force

In March of 1994, the Secretary of the Air Force and the Under Secretary of Defense for Personnel and Readiness were asked to develop a sexual harassment policy action plan. The plan included two aspects: the establishment of a Defense Equal Opportunity Council (DEOC) Task Force on Discrimination and Sexual Harassment to review the Military Services' discrimination complaints systems and recommend improvements, including the adoption of Department-wide standards; and the administration of a Department-wide sexual harassment survey because one had not been fielded since 1988.

The survey, administered and reported in 1995, listed several major findings pertaining to sexual harassment in the military.<sup>1360</sup> Seventy-eight percent of all female respondents using an expansive sexual harassment questionnaire (called a Form B Questionnaire) indicated they experienced some form of sexual harassment in the preceding twelve months.<sup>1361</sup> Notably, the survey found that the percentage of women who experienced various forms of sexual harassment had declined since the last Department-wide survey in 1988.<sup>1362</sup> The survey indicated that, of those responding, junior enlisted personnel were more likely to experience sexual harassment than senior enlisted personnel or officers.<sup>1363</sup> The vast majority of offenders were active-duty military, not civilians.<sup>1364</sup> Approximately one-quarter of those who indicated experiencing an incident of sexual

<sup>1357</sup> *Id.* at 19.

<sup>1358</sup> *Id.* at 9.

<sup>1359</sup> *Id.* at 15.

<sup>1360</sup> Lisa Bastian, Anita Lancaster, and Heidi Reyst, *Department of Defense 1995 Sexual Harassment Survey*, Defense Manpower Data Center (1995) available at [http://www.defenselink.mil/prhome/docs/r96\\_014.pdf](http://www.defenselink.mil/prhome/docs/r96_014.pdf).

<sup>1361</sup> *Id.* at 26-27.

<sup>1362</sup> *Id.* at 37.

<sup>1363</sup> *Id.* at Executive Summary, 5.

<sup>1364</sup> *Id.* at 6.

harassment said they reported the incident.<sup>1365</sup> Some respondents who reported sexual harassment indicated that they experienced reprisal after reporting.<sup>1366</sup>

Apart from the survey, the DEOC Task Force held nineteen formal meetings from May 13, 1994 through April 28, 1995. On May 5, 1995, the final report of the Task Force was distributed to Congress, the Service Secretaries, and other officials within the Department of Defense.<sup>1367</sup> The report's recommendations were incorporated into DoD Directive 1350.2, Department of Defense Military Equal Opportunity Program, and DoD Instruction 1350.3, Affirmative Actions Planning and Assessment Process.

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<sup>1365</sup> *Id.* at 6.

<sup>1366</sup> *Id.* at 6.

<sup>1367</sup> See Edwin Dorn and Sheila E. Widnall, Report of the Defense Equal Opportunity Council Task Force on Discrimination and Sexual Assault, May 1995, executive summary provided at Exhibit 392.

## **Appendix B**

### *Glossary*

**Academy Board (Air Force Instruction 36-2020/USAF Instruction 36-169).** This board of senior Academy officers consults with the Superintendent on cases regarding deficient cadets, approves cadets for return or reappointment to the Academy (in accordance with 10 U.S.C. §9351) following their disenrollment, establishes graduation standards, and performs other functions specified in USAFA Instruction 36-165, *The U.S. Air Force Academy Board*.

**Academic Probation (Air Force Instruction 36-2020).** The status of a cadet who fails to achieve a satisfactory academic standing, as determined by the Academic Review Committee.

**Academic Review Committee (ARC).** The ARC evaluates cadets who are deficient in academics. The ARC may: 1) direct extra instruction or special training; 2) place cadets on or remove them from academic probation; 3) implement other appropriate measures; or 4) recommend disenrollment of or deny graduation to a cadet whose academic deficiency shows a lack of aptitude for commissioned service.

**Administrative Turnback (USAF Instruction 36-169).** Turnback is requested by a cadet due to a hardship of a temporary nature. It affords the cadet an opportunity to be away from the Academy for one or two semesters in order to resolve the hardship. The program is intended to prevent resignations of cadets otherwise able to successfully complete graduation and commissioning requirements.

**Air Officer Commanding (AOC) (34 Training Group Operating Instruction 36-12).** An active duty officer who commands a squadron of approximately 110 officer candidates and directly supervises one NCO. Leads, teaches and evaluates cadets through all aspects of cadet and military life. Enforces standards and exercises disciplinary action as appropriate. Primary role model and mentor in the formation of cadet leadership skills and professional qualities. Guides cadet chain of command in maintaining high standards of discipline, developing unit esprit de corps, and implementing training programs. Counsels cadets individually and as a group. Resolves conduct and aptitude problems and makes recommendations as to a cadet's commissionability to Training Wing Commander.

**Alcohol Violations (AF Cadet Wing Instruction 51-201).** Misbehavior directly involving the cadet's alcohol use (such as DUI or drinking underage), or where the cadet's consumption of alcohol could reasonably be considered as contributing to the misbehavior. Any alcohol violation will result in the cadet being placed on Conduct Probation. The categories of alcohol-related incidents are as follows:

**Non-driving.** Alcohol-related misconduct not involving a motor vehicle.

**Driving.** Alcohol-related misconduct where the cadet is the operator of a motor vehicle.

Misconduct includes, but is not limited to: any consumption of alcoholic beverages by a cadet driving a motor vehicle; a moving violation; DWAI (driving while ability impaired), blood alcohol content (BAC) between .05 and .099; and DUI with BAC greater than or equal to .10.

**Aptitude for Commissioned Service (Air Force Instruction 36-2020).** The personality, capacity and inclination to adapt to the relationships, customs and responsibilities of military service and the strength of character and willingness to accept those limits on freedom of individual action that the structure and legal status of military service imposes on its members.

**Aptitude Probation (AF Cadet Wing Instruction 51-201).** The status of a cadet whose military performance raises doubt concerning his or her aptitude for commissioned service as determined by Commandant of Cadets, his or her designee, or the MRC. A cadet is placed on Aptitude Probation when he or she displays an inability to meet Cadet Wing standards. The minimum period for Aptitude Probation is three months. If a cadet goes over seventy-five demerits in a six-month period they will be placed on Conduct and/or Aptitude Probation.

**Athletic Probation (Air Force Instruction 36-2020).** The status of a cadet who fails to meet established cadet athletic performance standards, raising doubt concerning his or her aptitude for commissioned service, as determined by the Athletic Director, his or her designee, or the Physical Education Review Committee.

**“Babes in Blue.”** Informal mentoring program through which female Air Force officers provide advice to female cadets.

**Basic Cadet Training (BCT) (AF Cadet Wing Instruction 36-3010).** The BCT program is a period of accelerated learning during which fundamental military skills are acquired; physical condition is improved; and by example and instruction the basic cadets increase their confidence and motivation to serve in the Air Force. The BCT program is also a learning experience for the upperclass cadre in the techniques of command, leadership and followership.

**Basic Cadets’ Bill of Rights.** Brief six-point statement setting forth Basic Cadet rights and informing cadets they are protected from being touched, sworn at, subjected to unwanted sexual advances, having their sleep times violated, or being subjected to cadre training in showers or other inappropriate requests.

**Cadet Medical Evaluation Board (CMEB) (Air Force Instruction 36-2020).** The CMEB reviews cadets’ records to determine whether: 1) cadets with medical problems remain qualified for commissioning; 2) medical conditions warrant a medical waiver; and 3) a medically disqualified cadet is qualified for enlisted service. When the CMEB recommends disqualification, the Secretary makes the final decision on the case.

**CASIE (Cadets Advocating Sexual Integrity and Education) (DFBLC Operating Instruction 75-7).** The CASIE program has a two-fold purpose: 1) to operate a cadet run sexual assault Hotline for cadets and 2) to provide education to the Cadet Wing on the issue of sexual assault. The Hotline strives to: 1) provide support through trained peer-counselors; 2) provide current information on procedures, regulations, and referrals; and 3) encourage victims of sexual assault to utilize available services. The education component of CASIE has the following objectives: 1) to increase awareness of sexual assault, thereby increasing victim confidence and support; 2) to help cadets and staff respond to sexual assault victims with knowledge and compassion; and 3) to promote honest and open communication in relationships in order to prevent sexual assault. CASIE is administered by the Sexual Assault Services Branch in the Cadet Counseling Center (DFBLC).

**Chain of Command (AF Cadet Wing Instruction 36-3004).** Those cadets and officers in the hierarchy of supervision over any cadet. The immediate chain of command refers specifically to the lowest levels of the hierarchy (from rater to squadron commander or command equivalent).

**Condonation (AF Cadet Wing Instruction 51-201).** If a cadet overlooks or implies forgiveness of a violation (either at the time of occurrence or afterwards) of directives, policies or instructions and/or fails to take immediate action, he or she has condoned that misconduct.

### **Classes of Offenses.**

Class A – Minor discrepancies in room maintenance and or personal appearance; minor infractions of procedures, standards or directives.

Class B – Duty related offenses; more serious violations of standards.

Class C – Behavior or relationship offenses, negligent infractions of procedures, directives or standards.

Class D – Serious violations of established standards or conduct violations indicating continued disregard for standards, alcohol related incidents, sexual misconduct.

**Commander Directed Evaluation (CDE) (Air Force Instruction 44-109).** A clinical assessment of a member for a mental, physical, or personality disorder, the purpose of which is to determine a member's clinical mental health status and/or fitness and/or suitability for service. At a minimum, the mental health evaluation shall consist of a clinical interview and mental status examination and may include, additionally: a review of medical records; a review of other records, such as the Service personnel record; information forwarded by the member's commanding officer; psychological testing; physical examination; and laboratory and/or other specialized testing. Interviews conducted by the Family Advocacy Program or Service's drug and alcohol abuse rehabilitation program personnel are not considered CDEs for the purpose of Air Force Instruction 44-109.

**Conduct Probation (AF Cadet Wing Instruction 36-2401).** The status of a cadet whose conduct raises doubt concerning his or her qualification to remain a cadet as determined by 34<sup>th</sup> Training Wing Commander, his or her designee, or the MRC. This type of probation is conduct-specific, and is normally tied to behavior documented on the AFCW Form 10. Failure to successfully complete this process will normally result in the convening of the MRC. The minimum period for Conduct Probation is three months.

### **Conduct Status (AF Cadet Wing Instruction 51-201):**

**Probationary.** When a cadet accumulates seventy-five or more demerits within a 6-month moving period, the cadet must be placed on Conduct or Aptitude Probation.

**Deficient.** Cadets are deficient in conduct when: they are on conduct probation; they have met or exceeded seventy-five demerits in a moving 6-month period; have not demonstrated satisfactory performance during the Conduct Probation period; or, have committed major conduct violations showing a disregard for accepted standards of conduct.

**Conduct Violation (AF Cadet Wing Instruction 51-201).** A failure to meet Cadet Wing standards, whether through design, ignorance, negligence, carelessness or failure to perform duty.

**Confinement (AF Cadet Wing Instruction 51-201).** A 1-hour, 50-minute period during which a cadet is confined to his or her room. Confinements are normally given for Class A and B violations.

**Demerit (AF Cadet Wing Instruction 51-201).** A reference mark of conduct or deportment. A demerit is not a punishment, but excessive demerits can lead to disenrollment.

**Discrimination (AF Cadet Wing Instruction 36-3004).** Discrimination is defined as conduct or statements which reveal an inability or unwillingness to provide equal opportunity and fair and impartial treatment to an individual or group because of race, gender, religion, color, national origin or age.

**Disenrollment (Air Force Instruction 36-2020).** Termination of cadet status. Disenrollment is a consequence of the Superintendent's determination that a cadet is not qualified for commissioning. A cadet is disenrolled when the Secretary of the Air Force approves his or her resignation or dismissal adjudged by court martial; or accepts the recommendation of the Superintendent for involuntary disenrollment. Removal from the Cadet Wing pending disenrollment entails loss of entitlement to participate in academic, athletic, morale, and military programs, but does not in itself end cadet status or other military obligations, and some or all of its normal effects as described above may be suspended by the Superintendent. Final disposition of cadet military service obligations will be made by the Secretary of the Air Force.

**Driving Privileges (AF Cadet Wing Instruction 51-201).** Operating any type of motor vehicle, regardless of ownership, within the boundaries of the Academy, and within a 150-mile radius of USAFA. These privileges extend only to cadets in good standing.

**First-Class cadet (C1C).** Cadet in fourth year at the Academy (upperclass cadet). Also referred to as 1<sup>o</sup>, first degree, or "firstie."

**Form 10.** The AFCW Form 10 is the prescribed method to document cadet conduct, e.g., conduct violations, and is entered in the Cadet Personnel Record as a record of behavior.

**Fourth-Class cadet (C4C).** Cadet in the first year at the Academy. Also referred to as 4<sup>o</sup>, fourth degree, or doolie.

**Fraternization (Air Force Instruction 36-2020).** A relationship between officer and enlisted members that involves, or gives the appearance of, improper use of rank or position, partiality, or preferential treatment. At the Academy, it includes association on terms of undue familiarity or military equality, and dating between upperclass cadets and fourth-classmen, and between officers or enlisted personnel and cadets of any class. *See also* Air Force Cadet Wing Instruction 36-2909 for a discussion of Cadet Fraternization.

**Good Standing (AF Cadet Wing Instruction 51-201).** A cadet who does not have any outstanding punishments, is not on any formal probation and is performing up to the standards and expectations of cadet and superiors, as reflected by his or her MPA, Grade Point Average and Physical Education Average.

**Hap's Place.** Social gathering place for cadets located in Arnold Hall which serves beer. Only first and Second-Class cadets and their civilian guest(s), of legal age, are authorized use of "Hap's Place."

**Hazing (AF Cadet Wing Instruction 36-2909).** Defined at the Academy as any unauthorized assumption of authority by a cadet whereby another cadet suffers or is exposed to any cruelty, indignity, humiliation, oppression, or the deprivation or abridgment of any right.

**"Hits."** Slang term for demerits. *See* "demerit," above.

**Honor Board (AFCW Honor Code Reference Handbook).** The purpose of the Wing Honor Board is to review evidence and hear testimony from the respondent and witnesses in the case, to discuss the evidence, and to make a judgment as to whether or not the respondent violated the Honor Code. Wing Honor Board proceedings are non-adversarial administrative actions having no prosecutor or defense representation. Hence legal counsel is not permitted in the boardroom during the proceedings, but counsel may be present outside the boardroom to consult with the respondent during recesses.

**Inappropriate Material (AF Cadet Wing Instruction 34-601).** Inappropriate material includes, but is not limited to, material which insinuates, promotes, or tolerates discrimination based upon

race, gender, religion, color, national origin or age; displays obscene, lewd, profane or suggestive content; challenges authority; shows disrespect to the nation or its leadership; or discredits the Academy or the Air Force. Examples of material considered inappropriate include, but are not limited to, material which displays men or women in revealing clothing. A general guideline for inappropriate material is whether the picture openly or cryptically displays breasts of women, buttocks, or genitals of the individual. A second standard would be whether the standard of dress is normally accepted in society. Other inappropriate material may be flags which may be considered offensive to others: e.g., Nazi flags, Nation of Islam flags, etc. Any material whose intent is to degrade or imply a negative distinction or perception, stereotype, attitude, or overtone about a person's age, color, national origin, race, ethnic group, religion, or sex would be considered inappropriate. Alcohol memorabilia is also inappropriate.

**Incident (AF Cadet Wing Instruction 51-201).** One or more conduct violations connected by time and/or circumstance. A review of the overall incident will determine the extent of the punishments/sanctions awarded.

**Instruction.** Used interchangeably with "regulation," it commonly refers to a directive issued by the Air Force or the Academy.

**Life Skills Center.** The mental health services component of Air Force medical facilities, e.g., Medical Groups or Medical Squadrons.

**Medical Turnback (USFA Instruction 48-104/USFA Instruction 36-169).** Cadets placed on medical turnback status are permitted to leave the Academy in a leave without pay status to allow time for their medical condition to resolve. Cadets are recommended for this program only if it is anticipated that their medical problem can be corrected within one year. The cadet is able to obtain medical care at government expense while on medical turnback status.

**Military Review Committee (AF Cadet Wing Instruction 51-201/AF Cadet Wing Instruction 36-2401).** A standing committee of the Academy Board that reviews cadet records and makes decisions on the placement, continuation or removal of cadets on Aptitude or Conduct Probation. The MRC makes recommendations to the Superintendent on disenrollment of cadets deficient in aptitude for commissioned service, as evidenced by a deficient MPA and/or conduct history. A cadet may be separated for a pattern of disciplinary infractions, a pattern of misconduct, commission of an offense for which dismissal could be adjudged under the UCMJ, or civilian conviction. A cadet may also be separated for harassment or violence against any service member.

**Military Training Leader (MTL) (34 Training Group Operating Instruction 36-12).** Active duty noncommissioned officer who serves as the First Sergeant to the AOC and Cadet Squadron of approximately 110 Air Force Academy cadets. Functions as advisor to the AOC on cadet issues. Serves as NCO role model for cadets. Conducts military related training, monitors and advises on drill and ceremonies, and assists in counseling cadets on personal and professional matters. Assists the AOC and Center for Character Development in educating cadets on character, honor and human relations. Provides educational support through the Training Squadron in curriculum areas relating to leadership, management and the enlisted force. Supports physical fitness programs, training weekends, military training periods and social functions.

**Moving 6-Month Period (AF Cadet Wing Instruction 51-201).** Any consecutive 6-month period (including leave periods and summer training) when demerits can accumulate. Include all demerits received during the most recent 6-months to determine a cadet's conduct status. The date the awarding official signs the block at the bottom of the AFCW Form 10 is the date used to determine the final date the demerits apply (for example, demerits awarded on 15 Jan count until 15 Jul).

**Negligence (AF Cadet Wing Instruction 51-201).** The failure to exercise the degree of judgment, care or caution, under the circumstances, which would be expected of a reasonable, prudent person.

**“Over the Fence (OTF).”** Cadet’s unauthorized temporary departure from Academy grounds.

**Physical Review Committee (PERC) (Air Force Instruction 36-2020).** The PERC evaluates cadets whose physical fitness or performance in physical education or intramural training is deficient. The PERC may: 1) Direct corrective measures, including aptitude probation or 2) Refer cadets for possible disenrollment.

**Regulation.** Used interchangeably with “Instruction.”

**Resignation (Air Force Instruction 36-2020).** A cadet requests separation from the Academy and/or discharge from the Air Force. If the request for resignation is approved, the cadet is disenrolled and either discharged or separated according to USAFA Instruction 48-104.

**Restriction (AF Cadet Wing Instruction 51-201).** A disciplinary sanction/status imposed on cadets to restrict their freedom of location and movement.

**Second-Class cadet (C2C).** Cadet in third year at USAFA. Also referred to as 2<sup>o</sup> or 2<sup>nd</sup> degree.

**Sexual Assault Services Committee (SASC) (USAFA Instruction 51-201).** The Sexual Assault Services Committee at the Academy serves as the (1) office of primary responsibility (OPR) for coordinating medical services, psychological counseling, legal advice, administrative intervention, and education concerning sexual assault; (2) key administrative body for the Cadet Sexual Assault Hotline, and the Victim Advocate Program; and (3) central resource for tracking and monitoring reported cases of sexual assault.

**Sexual Harassment (AF Cadet Wing Instruction 36-2909).** Sexual harassment is a form of sex discrimination that involves unwanted sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. This differs from an unprofessional relationship which involves mutual consent by all involved.

**Sexual Harassment (Air Force Instruction 36-2706).** A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission of such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career or (quid pro quo harassment).
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or (quid pro quo harassment).
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.
- This definition emphasizes that workplace conduct, to be actionable as “abusive work environment” harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. (“Workplace” is an expansive term for military members and may include conduct on or off duty, twenty-four hours-a-day.) Any person in a supervisory or command position who uses or condones any form

of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

**Sexual Misbehavior (AF Cadet Wing Instruction 36-2909).** This includes, but is not limited to the following offenses:

Sexual intercourse under circumstances which may bring discredit to the Cadet Wing, Academy, the Air Force, or which indicate a character or an attitude inconsistent with commissioning. This includes sexual intercourse in the dormitories, on a military installation, the Academy reservation, or while on an Academy-sponsored activity such as squadron, club or intercollegiate trips.

Lewd or indecent acts or assaults (rape) as defined in Article 134 of the UCMJ.

Homosexual act(s), attempt(s) to engage in homosexual act(s) or soliciting another to engage in a homosexual act or relationship. A board of officers will convene according to Air Force Instruction 51-602, Board of Officers.

Other indecent acts subject to prosecution by local, state, federal or military jurisdictions (involuntary disrobing or exposing another is an indecent act and a serious invasion of privacy).

**Staff Team.** The staff team, also referred to as the "fact-finding team" and the "investigative report team,"; one or more teams of Air Force lawyers, paralegals and other staff experts that assisted the Working Group in collecting, analyzing evidence, and helping write the Working Group's report.

**Squadron Commander's Review Board (AF Cadet Wing Instruction 51-201).** This board may make recommendations through cadet and officer chain of commands to the Group AOC/MTL.

**Squadron Duty Officer.** The squadron duty officer is accountable to the squadron commander and is responsible for maintaining security order and discipline in the squadron area.

**Summer Training Review Committee (STRC) (Air Force Instruction 36-2020).** The STRC evaluates cadets whose performance or conduct during cadet summer training programs shows questionable aptitude for commissioned service. The STRC may direct corrective measures (including probation) or refer cadets for possible disenrollment.

**"Terrazzo Booty."** A term intended to describe the weight gain of female cadets during the period from their status as Fourth-Class cadet to First-Class cadet.

**TESSA (Trust, Education, Safety, Support and Action).** A private nonprofit organization which provides support services for victims of domestic violence or sexual assault.

**Third-Class cadet (C3C).** Cadet in second year at the Academy. Also referred to as 3<sup>o</sup> or third degree.

**Tour (AF Cadet Wing Instruction 51-201).** A 1-hour period during which a cadet marches under arms under the supervision of the AFCW/DO. Tours are normally given for Class C or D offenses. However, the awarding official can give tours for Class A or B offenses if mitigating circumstances dictate.

**Verbal Abuse (AF Cadet Wing Instruction 36-3004).** Verbal abuse is defined as any language or tone of voice that is unnecessarily out-of-control, defamatory, profane, insulting, demeans the subordinate, or minimizes a cadet as a human being. Abusive comments made in jest are also prohibited.

**Appendix C*****Acronyms***

<b>Abbreviation</b>	<b>Meaning</b>
ABW	Air Base Wing
ACES	Academy Character Enrichment Seminar
ACQ	Academic Call to Quarters
ADAPT	Alcohol Drug Abuse Prevention and Treatment Program
AF	Air Force
AFA	Air Force Academy
AFCW	Air Force Cadet Wing
AFCWI	Air Force Cadet Wing Instruction
AFL	Air Force Instruction
AFOSI	Air Force Office of Special Investigations
AH	Department of Athletics
AFMOA	Air Force Medical Operations Agency
AOC	Air Officer Commanding
ARC	Academic Review Committee
BCT	Basic Cadet Training
C1C	First-Class cadet (also known as First Degree, or Firstie)
C2C	Second-Class cadet (also known as Second Degree)
C3C	Third-Class cadet (also known as Third Degree)
C4C	Fourth-Class cadet (also known as Fourth Degree, or Doolie)
CASIE	Cadets Advocating Sexual Integrity and Education
CC	Commander
CCQ	Cadet-in-Charge of Quarters
CIF	Cadet Information File
CMEB	Cadet Medical Evaluation Board
CV	Vice Commander
DF	Dean of Faculty
DFBLC	Academy's Cadet Counseling and Leadership Development Center
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DoDR	Department of Defense Regulation
DRU	Direct Reporting Unit
DUI	Driving Under the Influence
DWAI	Driving While Ability Impaired
FOUO	For Official Use Only
GAO	US General Accounting Office
GPA	Grade Point Average
HREO	Human Resources Education Officer
IAW	In Accordance With
IM	Internet Message
IO	Inquiry Officer
MDG	Medical Group
MEB	Medical Evaluation Board

Abbreviation	Meaning
MFR	Memorandum For Record
MPA	Military Performance Appraisal
MRC	Military Review Committee
MSS	Military Strategic Studies
MTL	Military Training Leader
MWR	Morale, Welfare and Recreation
NCO	Noncommissioned Officer
NCOIC	Noncommissioned Officer in Charge
OI	Operating Instruction
OIC	Officer in Charge
OPR	Office of Primary Responsibility
OPR	Officer Performance Report
OSI	Office of Special Investigation
OTF	Over The Fence
PE	Policy and Evaluation
PEA	Physical Point Average
PERC	Physical Education Review Committee
PFT	Physical Fitness Test
POV	Privately Owned Vehicle
SAAM	Sexual Assault Awareness Month
SAMI	Saturday Morning Inspection
SANE	Sexual Assault Nurse Examiner
SECAF	Secretary of the Air Force
SJA	Staff Judge Advocate
SOD	Senior Officer of the Day
SUPE	Superintendent
TDY	Temporary Duty
TESSA	Trust, Education, Safety, Support and Action
TRG	Training Group
TRW	Training Wing
UCMJ	Uniform Code of Military Justice
UOD	Uniform of the Day
USAF	United States Air Force
USAF A	United States Air Force Academy
USAF A I	United States Air Force Academy Instruction
VAP	Victim Advocate Program
VWAP	Victim Witness Assistance Program

**Appendix D*****Table of Authorities***

- 5 U.S.C. § 552a, *Privacy Act of 1974 - As Amended*
- 10 U.S.C. §§ 801 - 946, *Uniform Code of Military Justice*
- 18 U.S.C. § 1512, *Tampering With a Witness, Victim, or an Informant*
- 18 U.S.C. § 1513, *Retaliating Against a Witness, Victim, or an Informant*
- 42 U.S.C. §§ 10601 - 10605, *The Victims' Rights and Restitution Act of 1990*
- DoD Directive 1030.1, *Victim and Witness Assistance*, 23 November 1994
- DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*, 23 December 1994
- DoD Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, August 18, 1995 (Administrative Reissuance Incorporating Change 1, May 7, 1997)
- DoD Publication 5400.7-R, *DoD Freedom of Information Act Program*, September 1998
- DoD Instruction 5504-3, *Initiation of Investigations by Military Criminal Investigative Organizations*, 21 June 2002
- DoD Instruction 5505.3, *Initiation of Investigations by Military Criminal Investigative Organizations*, June 21, 2002
- DoD Regulation 6025.18R, *DoD Health Information Privacy Regulation*, January 2003
- Air Force Mission Directive 39, *Air Force Office of Special Investigations (AFOSI)*, 1 November 1995
- Air Force Policy Directive 31-2, *Law Enforcement*, 6 May 1994
- Air Force Policy Directive 36-29, *Military Standards*, 1 June 1996
- Air Force Policy Directive 51-2, *Administration of Military Justice*, 7 September 1993
- Air Force Policy Directive 71-1, *Criminal Investigations and Counterintelligence*, 1 July 1999
- Air Force Policy Directive 90-1, *Policy Formulation*, 1 September 1998
- Air Force Policy Directive 90-2, *Inspector General—The Inspection System*, 1 September 1999
- Air Force Policy Directive 90-3, *Inspector General—The Complaints Program*, 1 November 1999

- Air Force Policy Directive 90-4, *Relations with Congress*, 22 July 1993
- Air Force Instruction 31-201, *Security Police Standards and Procedures*, 4 December 2001
- Air Force Instruction 31-206, *Security Forces Investigation Program*, 1 August 2001
- Air Force Instruction 32-6005, *Unaccompanied Housing Management*, 1 June 1998
- Air Force Instruction 33-360, Volume 1, *Publications Management Program*, 6 May 2002
- Air Force Instruction 36-2019, *Appointment to the United States Air Force Academy*, 16 May 1994
- Air Force Instruction 36-2020, *Disenrollment of United States Air Force Academy Cadets*, 22 April 1999
- Air Force Instruction 36-2110, *Assignments*, 1 February 2000
- Air Force Instruction 36-2706, *Military Equal Opportunity and Treatment Program*, 1 December 1996
- Air Force Instruction 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, 6 July 2000
- Air Force Instruction 44-102, *Community Health Management*, 17 November 1999
- Air Force Instruction 44-109, *Mental Health, Confidentiality, and Military Law*, 1 March 2000
- Air Force Instruction 51-201, *Administration of Military Justice*, 2 November 1999
- Air Force Instruction 51-202, *Nonjudicial Punishment*, 1 July 2002
- Air Force Instruction 51-602, *Boards of Officers*, 2 March 1994
- Air Force Instruction 51-904, *Complaints of Wrongs under Article 138, Uniform Code of Military Justice*, 30 June 1994
- Air Force Instruction 71-101, Volume 1, *Criminal Investigations*, 1 December 1999
- Air Force Instruction 90-201, *Inspector General Activities*, 1 October 2002
- Air Force Instruction 90-301, *Inspector General Complaints*, 30 January 2001
- United States Air Force Academy Instruction 36-101, *Preparation and Use of USAFA Form 9, Clearance Record for Separating*, 20 July 2000
- United States Air Force Academy Instruction 36-150, *Appointment and Promotion to Academic Ranks*, 28 November 2000
- United States Air Force Academy Instruction 36-151, *Permanent Professors*, 20 March 2000

United States Air Force Academy Instruction 36-152, *The Cadet Helping Agencies Team (CHAT)*, 6 April 1999

United States Air Force Academy Instruction 36-154, *Preparation and Use of USAFA Form 4, Cadet Referral*, 17 April 2000

United States Air Force Academy Instruction 36-155, *Cadet Extracurricular Activities Program*, 30 September 1996

United States Air Force Academy Instruction 36-156, *Doolie Day Out and Cadet Sponsor Programs*, 18 October 1995

United States Air Force Academy Instruction 36-157, *Violations of Academic Standards*, 12 August 2001

United States Air Force Academy Instruction 36-164, *Review and Disposition of Deficient Cadets*, 26 November 2000

United States Air Force Academy Instruction 36-168, *USAF Academy Honor Review Committee*, 3 January 2002

United States Air Force Academy Instruction 36-169, *Apply for and Administering Cadet Turnback Programs*, 17 July 2002

United States Air Force Academy Instruction 36-170, *Cadet Personnel Records*, 31 May 2002

United States Air Force Academy Instruction 36-171, *Academic Counseling and Registration*, 22 July 2002

United States Air Force Academy Instruction 36-172, *Assigning Squadrons and In-Processing Returning Cadets*, 12 May 1999

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United States Air Force Academy Instruction 36-177, *Readmission of Former USAF Academy Cadets*, 14 November 2001

United States Air Force Academy Instruction 36-180, *Allocation of Cadet Time*, 17 May 1999

United States Air Force Academy Instruction 36-182, *Cadet Nonacademic Appointment System (NAS)*, 12 August 2001

United States Air Force Academy Instruction 36-185, *Cadet Accountability System (CAS)*, 3 May 2001

United States Air Force Academy Instruction 36-187, *The US Air Force Academy Board*, 19 July 2000

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34 Training Wing Operating Instruction 10-1, *Officer Of The Day (OD) Program*, 6 March 2001

34 Training Group Operating Instruction 36-1, *Procedures for Cadet Wing Morale, Health, & Welfare Inspections*, 28 October 2002

34 Training Group Operating Instruction 36-10, *Cadet Wing Leadership Selection Process*, 15 June 1999

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34 Training Group Operating Instruction 36-133, *Command and Control*, 15 November 1999

34 Training Group Operating Instruction 36-160, *Air Officer Commanding (AOCs) Responsibilities in the Academic Review Committee (ARC) Process*, 3 April 00

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34 Training Group Operating Instruction 36-260, *Air Officer Commanding (AOCs) Responsibilities in the Physical Education Review Committee (PERC) Process*, 3 April 2000

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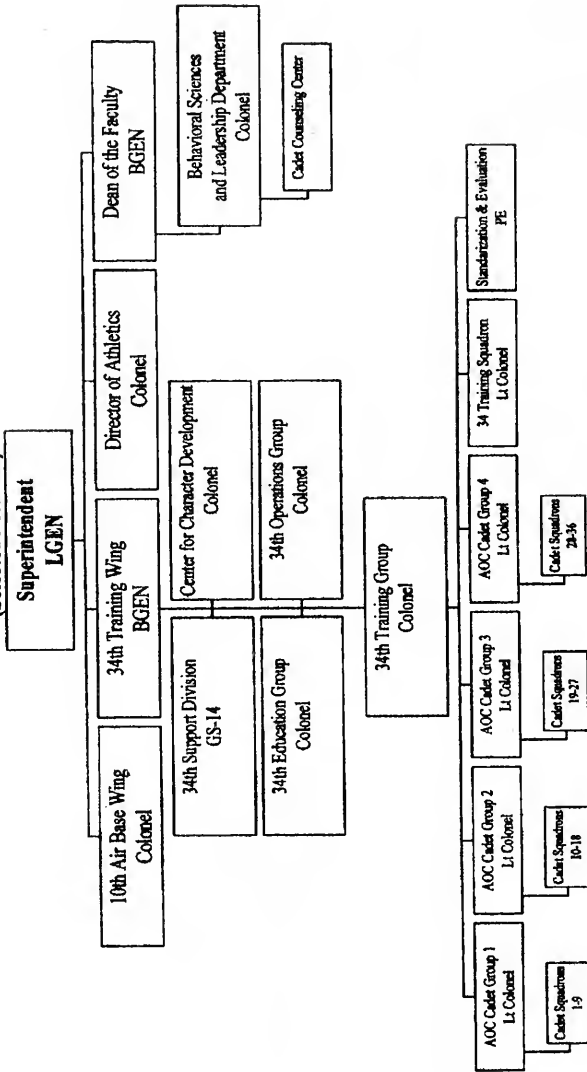
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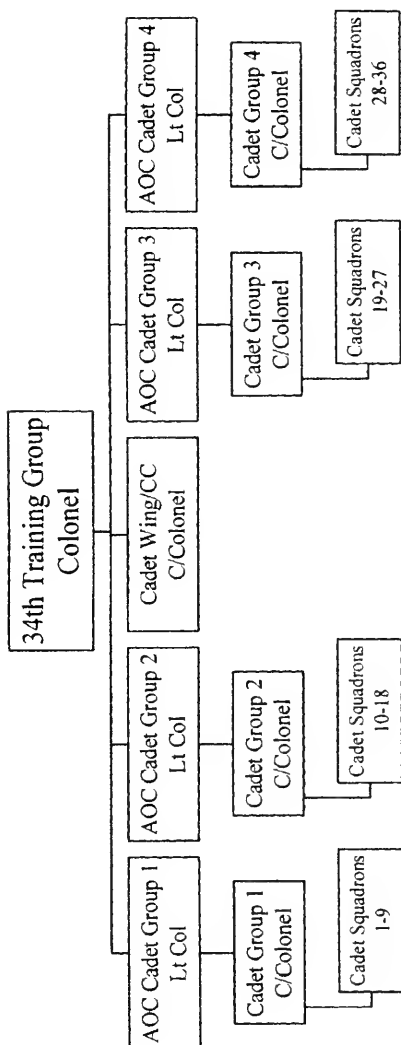
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- Air Force Cadet Wing Instruction 36-2909, *Conduct Standards*, 26 September 2001
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- Air Force Cadet Wing Instruction 38-103, *Operations Center Organization*, 2 October 2000
- Air Force Cadet Wing Instruction 51-201, *Discipline and Probation System*, 26 September 2001
- Air Force Cadet Wing Instruction 52-101, *The Chaplain Service*, 4 September 2002
- Counseling Center Operating Instruction 75-6, *Victim Advocate Program*

## Appendix E

*Academy Organization Chart<sup>1368</sup>*  
 (Selected Positions)



<sup>1368</sup> Academy Organization and Function Chart book, Exhibit 9, at 11, 27, 38, and Organization Chart for Academy and Cadet Wing Organization, Exhibit 371



Chairman WARNER. Thank you very much.

We'll now proceed to a round of 6 minutes initially, and may go to a second round.

To the distinguished General Counsel, the question of what directions did you receive from the Secretary as to the scope of your investigation initially, and did you, in the process of your work, confer with him and receive additions, revisions to the initial guidance? Are there documents? Would you provide those documents to this committee?

Ms. WALKER. Yes, sir. There is a written charter. Initially, the Secretary asked me to form a group to address these issues and fix the problem. I believe the initial guidance was verbal. It was very consistent with the written guidance that followed it, a month or so later. We do have that, and we can provide it.

It is also reflected in the report, and it has been consistent, that we were to look at the policies, programs, and practices at the Academy concerning its program to deter and respond to sexual assaults, in light of the cadet complaints, and we were to make findings and recommendations for change.

The cadet complaints, the interviews that we had and the e-mail that came in, specifically dealt with the way they had been treated once they reported an assault.

Chairman WARNER. In my short period for questions, I'm trying to get this procedure. You got verbal, then written guidance. In the course of your work, did questions arise, in your mind, which you addressed either to the Secretary or Under Secretary, or anyone else in the Air Force secretariat, for further guidance?

Ms. WALKER. Whenever questions came up, I went directly to the Secretary. That would have been probably on a weekly basis. The one I described in my testimony was fairly significant, because it would determine the nature of the report. In other words, there were issues concerning Academy leadership's role over the 10-year period, and I told him that we were uncomfortable dealing with accountability in that group. We felt it was an IG's role.

Chairman WARNER. Let me go back to the procedures. So throughout the process, you were in a consultative process with the Secretary. Under Secretary?

Ms. WALKER. No. The Secretary—

Chairman WARNER. Just the Secretary?

Ms. WALKER.—and the Chief. It was never the Under Secretary.

Chairman WARNER. When you finished your initial work, did you prepare a draft report and submit it to the Secretary and the Chief? Did they make changes to your final report?

Ms. WALKER. There were two stages, sir. There was the interim report, March 19, that was essentially a memorandum. They received a draft, which they gave me comments on. There was also a final. Basically it was the same as the draft, but with some questions possibly answered.

Then, for the final report, in June, there were several drafts—at least two, maybe three—provided to them. We received comments and questions. But during the entire process, before the report was reduced to writing, there were also consultations and information being provided to them.

Chairman WARNER. Did you, at any time, consider that while it may not have been part of the original instruction from the Secretary, that your responsibility would embrace, frankly, reviewing the Secretary's actions during the period that he was in office prior to his knowledge of this situation?

Ms. WALKER. This Secretary?

Chairman WARNER. This Secretary was in office some 20 months before these matters came to light. I presume that we can work on an assumption that the problems at the Academy persisted in that period of time. Now, if the facts are different, then I think the committee should know about it. I don't believe there's a clear demarcation in this culture and its problems with the appointments of Secretary Roche and General Jumper. In all probability, these problems continued, because both Secretary Roche and General Jumper repeatedly have said they had so much contact with other problems and people at the Academy and the problems never came to their attention. So I assume, from that, that it was ongoing and that your investigation now indicates it was ongoing.

So my question is, did you ever feel, as the General Counsel, that you should take it upon yourself to examine their actions or inactions as being consistent with addressing this problem?

Ms. WALKER. First of all, our charter was directly to look at the Academy and not look at issues of leadership accountability. I have stated that. But even when I brought leadership accountability to the Secretary, it didn't occur to me, no, to investigate the very leaders who were dealing with the problem.

Chairman WARNER. I don't understand your language here, "It didn't occur to me, no." Please rephrase that. Maybe I missed it.

Ms. WALKER. You asked me if it occurred to me to look at the current leadership, Secretary Roche and General Jumper. The answer is no, because they were dealing with the problem that had been brought to them.

Chairman WARNER. So you did not, on your own initiative, say, "I think I'd better look into everybody's actions."

Ms. WALKER. The only thing I will tell you, sir, is that, at the end of the report, we recognized that we had not dealt with the issue of leadership, in terms of what their role has been in the past and what it should be. That is why the area recommended for further study is that issue. We simply did not have time, nor was it in our charter, to get to that issue.

So we brought the issue up, but, no, we did not attempt to include current leadership, and we had been directed specifically not to include accountability issues in the review of the Academy.

Chairman WARNER. Mr. Secretary, both you and the Chief have testified to being physically present at the Academy, and dealing with a number of the individuals. You dealt with a series of problems, understandably swiftly and firmly, but this one never came to your attention. In any way are you suggesting that this problem didn't persist into the period in which each of you have been in office?

Secretary ROCHE. Mr. Chairman, I'm not sure, but my sense is there was no point, when I was confirmed, that all of a sudden things stopped. There were both new events, but there was also the adjudication of prior events, and I think they continued along the

way. There were some cases, like the Los Angeles case and the case of the assault on the 13-year-old young woman, which we observed were handled by the Academy, and there were court-martials. That there was a major problem associated with female cadets and sexual assault did not come to our attention, and it is one of the things that bothered me.

Chairman WARNER. Does that indicate to you, based on your extensive experience—and you, Chief—that this culture was very skillful in its covering up of these incidents? I mean, the fact that you all had so much contact with the Academy and the people there, and no one ever came to you. I accept your good faith representations. But it was ongoing, and it had been there, and it was there, and yet you state this morning, “It will not happen tonight.”

Secretary ROCHE. No.

Chairman WARNER. Then that culture has been stopped somehow.

Secretary ROCHE. Yes, sir. There’s two points I would make, Senator. One is that a lot of this was kept very much in a small group of people’s hands, so that when, in fact, we did act, we——

Chairman WARNER. Is that cadets, and cadets and staff, and supervisors and the like?

Secretary ROCHE. All of the above, sir. Because a number of the women cadets were very upset when we, in fact, started to take action. They felt that they didn’t realize that it was that big a problem, that we were overreacting. In fact, I spent 2 hours, well after midnight, with some cadets who were really quite upset that this all was coming out. It became clear that there was not a widespread understanding that this was a widespread problem.

So the culture of holding it close had to do with, among other things, the privacy rules and the Academy officials trying to adhere to those. It had to do with what they sent up the chain of command and what they did not send up the chain of command.

Chairman WARNER. My time is running out. But you’ve pierced that now, and you’re able to assure this committee and, indeed, Congress, this is over.

Secretary ROCHE. Oh, yes, sir. I can do that, because we now have climate surveys and everything else, and they are made very transparent.

Chairman WARNER. General, you said that you hold yourself accountable. Yet on March 26, 2003, it’s my understanding that you were working on this problem, and the General Counsel and others were looking at it, and yet you joined the Secretary, as I understand it, in a press release, which, in effect, said, “As the problems regarding the sexual assault allegations predate the current leadership, we do not hold Generals Dallager and Gilbert responsible.” I find that difficult to comprehend. It was an ongoing investigation, yet the two of you decided that these two seniors were not responsible.

General JUMPER. Sir, I think that if that sentence had continued, it would have been “for the whole 10 years worth of issues that we discovered.” I went on to say that the IG investigation that the Secretary had put in place was put into place over a long term so that each of the cases could be thoroughly studied to make sure that the leadership did react properly to each of those cases.

Chairman WARNER. Then you bring to the committee's attention such other documentation as what we have before us, which is this press release——

General JUMPER. Yes, sir.

Chairman WARNER.—because that's not in here. I find this a very difficult thing to understand in a very clear and precise rendering of a decision at the time this thing is just in its formative stages and investigations are going on.

Mr. Secretary, do you wish to address this?

Secretary ROCHE. Yes, sir. I tried, and I didn't do it very articulately, in March. Let me subscribe to Congresswoman Fowler's point, which summarizes it, "We believe you cannot hold someone accountable for that which they inherit, but you can certainly hold them accountable for how they've dealt with that which they inherited." That was the point I was trying to make at the press conference when I said that we could not hold the officers accountable for the climate. General Jumper—let me finish his other sentence—has said, "But if, as we go forward, there are things for which people should be held accountable, we will," and we have, and we're prepared to go forward.

The Working Group's report, by being a history and putting all the facts down, gives a lot of illumination as to problems of leadership at the Academy. It was the basis for our deciding to change out all four of the leaders, the preliminary report was. It was the basis for much of the Agenda for Change, which was written either by General Jumper or myself. It was also a good, solid basis for me to recommend to the Secretary of Defense that we not retire the existing superintendent at a three-star level, but, rather, at a two-star level.

General JUMPER. There's more to come. As the IG report comes in, we believe, in December, there will be more information for us that will talk to us about accountability and then allow us to initiate due process on those that we find wanting in their responsibilities.

Chairman WARNER. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

In April, General Barnidge, the Air Force Chief of Legislative Liaison, informed my staff that you, Secretary Roche, had directed the Air Force General Counsel to go back and determine what information was available to the Commandant or Superintendent at the Academy that should have raised their awareness of climate problems and whether they reacted appropriately to that information, and, second, whether any member of the Academy leadership established any barriers that prevented victims from reporting misconduct. Now, that was to apply to both the current and past individuals who held those positions at the Academy. That's what General Barnidge told us.

So, Secretary Roche, first, did you, in fact, give that guidance to Ms. Walker?

Secretary ROCHE. Senator, the night of our hearing, where it was very clear that we were not communicating as we would have liked to, both you and the Chairman tried to help us. We listened. We went back to my office that night, and we said we wanted to formulate two questions that we would be using to judge people on how

they dealt with that which they inherited. The first question was, "Did any officer put an additional barrier in the way of any woman making a report?" The second question we would ask would be, "Was there evidence to suggest that a commander had enough information so as to recognize that he or she had to dig a lot more, do a lot more, because while it may not have been crystal clear that there was a problem, there were enough indicators that we would expect a commander to, in fact, investigate more deeply?"

We did not give that direction to Ms. Walker. What we asked Ms. Walker to do was to continue to provide facts—facts on both sides, facts about what happened, who did what, when did they do it—but that we would use those questions to pass judgment on the officers with respect to their satisfying their command responsibilities.

Senator LEVIN. Who were you asking the questions to?

Secretary ROCHE. We would ask the questions of each of the officers involved there.

Senator LEVIN. You asked Ms. Walker to ask those two questions of all the officers?

Secretary ROCHE. No, sir.

Senator LEVIN. Who did you ask?

Secretary ROCHE. They are questions we would ask of a situation.

Senator LEVIN. You don't ask questions of a situation. You ask questions of a—

Secretary ROCHE. Ask of ourselves. In fact, we applied it to the Superintendent. We would ask ourselves, with the information we had available to us, could we form a judgment that the officer involved, in one case, had enough indications that there was a significant problem, that that officer should have acted or should have called for help or should have done something else, as we would any commander in any one of our command positions.

Senator LEVIN. So that the statement, then, of the Air Force Legislative Liaison Chief to my staff that you directed Ms. Walker to ask those questions was wrong.

Secretary ROCHE. Yes, sir.

Senator LEVIN. Okay. Since that was obviously the point of our colloquy with you, why not ask Ms. Walker, as part of her Working Group, to make an inquiry on those issues? Why are you just asking yourself, instead of asking your General Counsel to reach her own conclusion and ask those questions?

Secretary ROCHE. The General Counsel knew we would be asking those questions.

Senator LEVIN. How would she know?

Secretary ROCHE. Because I told her. We were very open, these are the questions that we would use to judge, and that if there was any information that could illuminate those questions for any of the officers there, that they should be included in the Working Group report.

Senator LEVIN. But that she should not make an inquiry into the responsibility of the leadership herself. That should not be included in her Working Group's investigation.

Secretary ROCHE. What we wanted was a dispassionate, not argumentative, report that we could then follow up with.

Senator LEVIN. I know that, but my question—

Secretary ROCHE. Because we had a parallel——

Senator LEVIN.—my question is——

Secretary ROCHE.—we had a parallel process, Senator, that was going on——

Senator LEVIN. You told your General Counsel, then, to ask officers you talked to questions which could allow you to reach a conclusion about those questions, but you did not ask her and her Working Group to give you a report on those questions relative to the leadership at the Academy.

Secretary ROCHE. We did not ask her to ask those questions of anyone. We said those are the questions that we would be asking of the facts as they were assembled, and we would also be including results——

Senator LEVIN. Then they weren't asked——

Secretary ROCHE.—from the——

Senator LEVIN.—to assemble facts which could help you answer those questions. In other words, since we had this colloquy going back and forth, why not ask the Working Group, "Hey, leadership has a responsibility here, and if they inherited something, they've got a responsibility to change the climate, not just accept it."

Secretary ROCHE. Yes, sir.

Senator LEVIN. "We want you to include how did they deal with what they inherited in your investigation." Instead of doing that, you did what you just described, assuming I can understand it. Why didn't you ask that?

Secretary ROCHE. Effectively, the General Counsel and the Working Group were describing events that occurred, and they were illuminating those questions across the board.

Senator LEVIN. Ms. Walker, yesterday's edition of the Colorado Springs Gazette reported that a staff member who worked closely with you said that you removed proposed findings from your Working Group report that addressed senior official involvement in a 2000/2001 review by Air Force headquarters sexual assault Working Group into procedures for responding into allegations of sexual assault of the Air Force. Do you know what I'm referring to?

Ms. WALKER. I know what you're referring to, sir, yes.

Senator LEVIN. Are you aware of any draft comments prepared for your Working Group report that addressed the efforts of this earlier sexual assault Working Group?

Ms. WALKER. I'm sorry, I may not have understood your question——

Senator LEVIN. Let me repeat it.

Ms. WALKER. Thank you.

Senator LEVIN. Even though I'm out of time. I think I've probably——

Chairman WARNER. You're allowed to repeat it. Go ahead.

Senator LEVIN. Are you aware of any draft comments prepared for your Working Group report that addressed the efforts of that earlier sexual assault Working Group?

Ms. WALKER. Which earlier sexual assault Working Group?

Senator LEVIN. The one that was involved in a review in 2000 and 2001 by the Air Force headquarters sexual assault Working Group? Are you aware of that?

Ms. WALKER. Yes, let me speak to the issue. In my opening statement I mentioned that the 2000 inquiry, based on the OSI concern about the confidential reporting process that precluded them from getting information sufficient to investigate assaults, was known to the Working Group and it was documented in the report in three different places and footnotes. So I am very well aware of that. It was in the report. Now, whether there were portions that could have been, at one time, in and were out, I don't know.

This report went through incredible edits. At one point, the Secretary said it was too long and we should be more succinct. He wanted us to be clear. So we attempted to make it shorter. Of course, we got more information, which made it longer. So ultimately, I don't think I was able to reduce it much.

But I'm not aware of any findings, to speak to that article, that were omitted; I just don't remember any findings being omitted. Lots of text was in and out from time to time because it was verbose. Being written by a committee, it looked like a camel at one point.

Senator LEVIN. Things written by this committee are an exception to the camel rule, by the way. [Laughter.]

Chairman WARNER. Thank you.

Senator McCain.

Senator MCCAIN. I'd just follow up on Senator Levin's statement. Here's the news report that he just referred to: "Speaking on condition of anonymity, a staff member who worked closely with Walker said investigators were told to look into the 2000 inquiry and high-level officials' involvement in it. They then wrote their findings, only to have Walker remove them from the June report." Did you or did you not remove those findings of the people that were directed to look into the 2000 inquiry and high-level officers' involvement in it from the report? Yes or no?

Ms. WALKER. Senator, to my knowledge the answer would be no. We have that in the report itself. Now, it could have been edited down. Lots of things were edited down.

Senator MCCAIN. No, I'm asking whether you had them removed. That's the allegation.

Ms. WALKER. I don't remember.

Senator MCCAIN. You don't remember.

Ms. WALKER. I had lots of things edited down.

Senator MCCAIN. There's a lot of "don't remembers" around here. Do you still stand by your statement that the finding that there was no systemic—I'm trying to find the language—do you still stand by that in your report, that there's no systemic—

Ms. WALKER. The conclusion again: there were 43 findings. What you're speaking to is the conclusion—

Senator MCCAIN.—there was no systemic acceptance or "institutional avoidance of responsibility." Do you stand by those words?

Ms. WALKER. Based on the information on the Academy that the Working Group had, this was the conclusion derived by the staff team based on the evidence they had. If we had the evidence today that is additional to that which we had—

Senator MCCAIN. Do you stand by those—

Ms. WALKER.—we might have changed the conclusion.

Senator MCCAIN. It might have changed your conclusion?

Ms. WALKER. Yes, it might have changed the conclusion. Because we did not have——

Senator MCCAIN. Might have changed your conclusions——

Ms. WALKER. Might have changed the conclusions——

Senator MCCAIN.—that there was no systemic——

Ms. WALKER.—not the findings.

Senator MCCAIN.—acceptance or institutional avoidance of responsibility.

Ms. WALKER. Yes.

Senator MCCAIN. Wow.

Mr. Chairman, because we're in the "the dog ate my homework" and "it didn't happen on my watch" defense here, I'd like for all members to be able to see the statement of Ms. Kira Mountjoy-Pepka, who was raped in March 2002, describing not only the rape, but the subsequent treatment that she received at the Air Force Academy. It's a remarkable statement. I had a meeting with her, at her request, in my office. It's really a very sad story happening on Secretary Roche's and General Jumper's watch.

Chairman WARNER. It will be included in the record.

[The information referred to follows:]

## Statement of Kira Mountjoy-Pepka to the US Senate and House Armed Services Committees

This document is essentially "Part 1" of my August 22, 2003 personal statement to the Honorable Tillie K. Fowler and the other members of the Congressionally Mandated Independent Panel. That Panel was charged to investigate and make recommendations about the allegations of sexual misconduct at the United States Air Force Academy. Tillie Fowler's report and was presented to the Congress on September 22, 2003.

October 3, 2003

To: US Senate and House Armed Services Committees

From: Kira Mountjoy-Pepka

Subject: My Response To Mary Walker's Air Force "Working Group" Report on Sexual Assault released June 19, 2003

On page 91, paragraph 3, line 9: The Walker report contains a brief reference (without names) to Doncosta Seawell's assault on me. The report as it relates to me personally is not only false in its presentation of historical events but also incomplete:

*"In another case, a Fourth-Class cadet (Kira) was approached via Instant Message by a First-Class cadet she did not know (Seawell). She later became aware that he was the Officer in Charge of the Flying Club, and he offered her opportunities to fly that she would not normally have had as a Fourth-Class cadet."*

Before I joined the Air Force in June 2001, I was already an FAA licensed private pilot (plus a graduate of the US Navy Sea Cadets Aviation ground school). I was convinced by one of the USAF Academy colonels (during the March 2001 orientation) to forgo the invitation to attend the US Naval Academy at Annapolis because at the Air Force Academy I would receive my ground school instructor license and become a cadet instructor at the beginning of my sophomore year. The colonel also was very anxious for me to become qualified to instruct in gliders.

In August 2001, after basic training, I was told that I was one of only five freshman cadets to begin flight training in the jet simulators. I was the only female selected to begin the training for that month. Two weeks later in late August when my parents and brother visited me during "Parent's Weekend," I took them all to the Aero Club (which is on the base) and joined. I paid \$600 dollars in advance for membership in the club (\$60 per month as I recall). Additionally, I was invited by the colonels to consider joining the USAFA cadet "Flying Squad." The Flying Squad is made up exclusively of other cadet FAA licensed private pilots. They fly in exhibitions at many of the outdoor Academy events. I chose not to join the flying squad in the fall of 2001 because I felt my schedule was too full already. But I remained a full member of the Aero Club. In fact, I was eligible to start flying any of the club airplanes as soon as I had free time and was "checked out" on the particular aircraft.

My opportunities and rights to fly had nothing directly to do with Doncosta Seawell except that in one case in November of 2001 he was involved in arranging one flight. It was supposed to be his job to schedule and arrange flights and airplanes for the cadet FAA pilots. I took such little notice of Seawell that when he later contacted me via e-mail using the Academy Internet I had no idea who he was. To suggest that there was anything more to this, or that Seawell had any special "opportunities" to offer fully licensed private pilots like me is a deliberate distortion of the facts. FAA licensed private pilots can fly passengers (just not for hire) in any aircraft that we are checked out in.

During my free time I did not need any other cadets' permission to fly the Aero Club's aircraft. Least of all the permission of Doncosta Seawell. When I was a member of the Aero Club, the club manager was Chuck Topalian. I don't know many details about the club's management, but I do know that the Academy Aero Club is actually overseen by Air Force officers and retired officers, most of whom are former graduates of the Academy.

I suspect my former commanding officers offered their own interpretations of events on page 91, paragraph 3, line 9 to the independent investigators because they might sound reasonable to anyone unfamiliar with aviation.

Also, just below on page 91, paragraph 3, beginning on line 12:

*"She stated that this was the beginning of a sexual relationship that she did not welcome and which she ultimately reported."*

I never had a "sexual relationship" with Doncosta Seawell. Seawell raped me in March 2002. I had only seen him in person two times and only at the Aero Club before he found out I had just been carried back to my empty dorm building from the cadet clinic where I had spent an entire day being pumped full of antibiotics for pneumonia. The language Mary Walker, the generals and colonels and majors plus the other authors of the Working Group Report offer as it relates to Seawell's two assaults upon me are a complete distortion of the facts surrounding the events as they actually unfolded. I gave my own words and statements about being raped by Seawell, verbally and/or in writing to (among others):

- Lt. Col (Ret) Alma Guzman, RN, BSN the Academy "Victim Advocate Coordinator."
- 2nd Lt. Lisa M. Case, CASIE Hotline and Education Program Manager.
- Major Timothy Keeperts Squadron Seven AOC
- Sgt Michael Roos Squadron Seven MTL.

- Capt Erin C. Glenn, Area Defense Counsel Military Cadet Counsel.
- Jarrell E. Clemmons, Special Agent United States Air Force Office of Special Investigations.
- At several of these meetings, I was accompanied by another (still active) USAF Academy cadet to act as witness.

The panel members will have to ascertain exactly why my former commanding officers, Generals John Dallager, Sylvanus Taco Gilbert, Colonels Marty Coffman, John Rivers, Laurie Sue Slavec, Major Christopher Heslin, their so-called investigators and their attorneys including Mary Walker chose to water down and misrepresent the historical events as they actually unfolded in their 200 + page report. Seawell raped two women plus me (there may be more women that Seawell raped, but I only know of these):

- Fall of 2000, former cadet MacKenzie Isackson (story published in People Magazine—page 79, March 10, 2003).
- December 2001, a civilian women from California. (By January 2002, Kathy Cady, the Los Angeles County District Attorney, plus the investigating officer, had officially informed the Academy that Seawell was the prime suspect in an alleged assault on a 22-year-old paraplegic woman in Los Angeles in December 2001.)
- March 2002, Me.

DA Cady provided the Air Force with the rape kit from the rape assault in California.

The Air Force never informed Kathy Cady that Seawell was a suspect for raping Isackson and me. Cady only learned of this in the spring of 2003 through a third party who searched her out on my behalf.

Seawell confessed to the rape of the 22-year-old civilian woman from California at his court martial and is now serving a prison sentence in California.

The generals and colonels knew that Seawell was under suspicion for rape in January 2002, and that he was most likely a serial rapist, yet they chose to not to restrict his movements on the Academy campus. I was his next victim. What is most outrageous is that with the aforementioned knowledge, my commanding officers did not limit his contact with female cadets nor did they warn any of us about him. After his attack on me, they lied and are still lying to cover up their failure to control and contain him.

I was ordered by the then 34<sup>th</sup> Training Group Commander Colonel Marty Coffman not to speak about what Seawell had done to me to anyone, not even my own father or my then boyfriend. I

was told repeatedly (and so were my parents) by my commanding officers that there was no rape because Seawell had seen me two times during the previous fall before the assaults. I have described in more detail some of the crimes that were committed against me but which were excluded from the Air Force Working Group Report in **"Part 2: Summary of Offenses Committed Against Me."**

*(Note: Because this document will become public information, and due to the extremely personal and heinous nature of the crimes that were committed against me by my assailant, and my own commanding officers, Part 2 and Part 3 of my original 20 page statement to the Independent Panel are not included here. However, any member of the Senate or House Armed Services Committees may read my original statement in its entirety.)*

Continued From Part 1 of My Original Statement . . .

In brief, some of the offenses committed against me include punishment "hits" my former commanding officers handed out to me after I reported that I had been raped by Seawell. It was obvious then, and even more so now, that if they acknowledged I had been raped they also had to admit their own negligence. What I didn't know then was how many other freshmen women just like me had also been persecuted by our former commanding officers for being raped by other cadets. But it is enough to say here that I made it unequivocally clear to everyone with knowledge of what Seawell did to me that I did not care if I actually had met him before. The rape was against my will. I had no *"unwanted sexual relationship"* with Seawell as Mary Walker's report describes. Even though I was very weak from being sick, I physically fought him and told him to leave me alone dozens of times. He assaulted me twice, raped me, threatened my life at gunpoint, disobeyed the "No Contact" order issued against him, and then stalked me for months. None of my former commanding officers ever held him accountable for any of this. Instead, they tried to get rid of me. After I reported what they were doing to me to my own US Senator Patty Murray, in an attempt to discredit me as a witness against them, through their operatives they published and distributed libel about me and my supposedly out of control sexuality on the Academy Cadet shared information board. It was also published in the *Falcon Pride* newsletter, and in a letter circulated by Captain Barbara Mahon Wenzel. None of these other facts are mentioned in Walker's report. I can only surmise that they were deliberately left out. However, what Walker has produced is a useful document for a very simple reason. It contains blatant denials and rewriting of historical reality, plus contains self-serving evasions of responsibility (as it relates to me) which are completely consistent and exemplify all my dealings with almost all of my former commanding officers since I was assaulted.

#### Page 93, Paragraph 2. Section C: "Loyalty to Peers Over Values"

Paragraph 3 which follows immediately, *"The Working Group found as others have observed earlier that cadets have a tendency to place loyalty to peers above loyalty to values. This misplace loyalty has at times resulted in toleration of inappropriate behavior associated with*

*sexual assault as well as a failure to report assault."*

**Paragraph 4, line 4** *"The emphasis on loyalty to peers is compounded by the desire of many cadets to feel accepted and avoid being ostracized for taking actions that may be viewed as unpopular by others."*

**Page 94, Paragraph 4, line 4** *"Another Group AOC referred to cadet misunderstandings of loyalty as the "mafia mentality" in which loyalty to friends is more important than loyalty to the Air Force."*

My observations about the problem of the former commanding officers' *"Loyalty to Peers Over Values"* are still having a direct and very negative impact upon my life. It is obvious to me that Generals Dallager, Gilbert and Col. Slavic in their public and private denials are the "exemplars" — the living role models for the problem of *"Loyalty to Peers Over Values."* It is exactly the same problem we are having right now with the highest-ranking leaders of the Air Force. From James Roche, the Secretary of the Air Force, to Mary Walker, the chief legal council, to the generals, colonels and majors who willingly carried out the criminal policies to persecute the victims of rape, to the fabricators of the Working Group's 200 plus page document — they are still doing exactly what they were all inculcated to do as young cadets and officers. Their own document proves that the Air Force Working Group and the officers who provided them with these so-called "facts" have placed their loyalty to each other above loyalty to the United States of America and the citizens they are supposed to be serving. It's nothing more and nothing less than a continuation of the cover up began by my former commanding officers. I am in complete agreement with Rep. Tillie Fowler's September 22 report in at least one respect: The Air Force cannot be trusted to investigate itself. I think the question the Senators and members of Congress should ask themselves now is how can they trust the men and women charged with running the Air Force who have proved beyond question they have no honor. The whole truth about what actually happened at the Air Force Academy will have to be found elsewhere.

Senator MCCAIN. Just so we can make sure that the record is clear, I'd like to completely read, just for a minute, the press conference that Secretary Roche and General Jumper held on March 26, 2003. Mickey Anderson with the L.A. Times said, "Have you in any way reprimanded or disciplined all leaders who are responsible; what do you say to the critics who say you're going too easy on these people? You just said a second ago that these people may have been responsible for." Secretary Roche replied, "The current group cannot be held responsible for everything that occurred in that 10-year period and certainly over a period longer than 10 years. If you're going to hold someone accountable for something, they had to have full authority to deal with it. To hold these two

or three people accountable is an easy thing, instead of getting at the larger problem. They're leaving their jobs. They are professionals who were hurt badly because they clearly feel themselves that they should have been clairvoyant in seeing things that they have not been able to see." Clairvoyant. "To hold someone accountable means there are two sides to a story, and they have a side, as well. We've looked at it. We know—look, under the circumstances, they might have been more clairvoyant, they may have been sharper, there may have been a survey they should have acted on. But to hold them accountable, per se, with what we know now, no. But if the IG finds specific evidence that an officer should have done something, not to do it, yes." Then Mickey Anderson said, "You're continuing to leave some of these people in leadership capacities. Their new jobs involve leadership. So I presume you trust them." Secretary Roche replied, "First of all, there's no reason not to trust them. One is retiring, one is coming to be a special assistant here, I'm not sure. I believe one got a meritorious service medal. But one of the four, nobody's accused him of anything. As a matter of fact, he's well liked. But, again, you're trying to get back to a couple of people, saying they're the whole problem. They're not the problem. Let's remember, cadets commit assaults against cadets." That's the statement made by Secretary Roche at that remarkable press conference.

Secretary Roche, it's been reported, on March 31, the very afternoon you were cautioned by this committee for failing to pursue accountability for sex abuse at the Academy, you granted a discharge in lieu of a court martial for a first lieutenant Air Force Academy graduate for sexual assault on an airman first class. You reportedly chose to do this despite the recommendation of several general officers in the chain of command for court martials. Do you have anything to say about that?

Secretary ROCHE. Yes, Senator, I do. That was a case that—there were people on both sides of the issue—there were many of them—there were also general officers on the other side of the issue, as well. There is a group called the Air Force Personnel Council, which is a dispassionate group of officers and civilians, who look at each of these cases and try to make sure that we're consistent over a period of time. That group has proven to be very useful in case after case, and they made a recommendation, with which I agreed. By the way, it was the same recommendation that General Jumper agreed to. There were general officers on both sides of the issue, Senator.

Senator MCCAIN. Ms. Walker, in the Fowler Commission Report, I want to repeat, "In June 2003, after completing her investigation of sexual assaults at the Academy, Air Force General Counsel Mary L. Walker released the report of the reporting group. The reporting group covers many aspects of cadet life, 'it avoids any reference to the responsibility of Air Force headquarters for the failure of leadership which occurred at the Academy.'" Then they go on to say, "The panel believes that the Air Force General Counsel attempted to shield Air Force headquarters from public criticism by focusing exclusively on events at the Academy." That's a pretty serious charge from a very credible panel. I think you ought to have the opportunity to respond to it.

Ms. WALKER. It's absolutely false, and it's based on no evidence whatsoever that I'm aware of, and I was shocked when I heard it. Senator MCCAIN. I was shocked, too.

Mr. Chairman, could I just mention one thing? At another hearing, I asked, "Why do we need an FAA-certified airplane?" Secretary Roche, "A tanker has to be an FAA-certified airplane, sir, because it goes to lots of places in the world." I have a letter from the FAA, that said they don't need to be FAA certified.

Secretary ROCHE. Senator, I was wrong. I mean Global Air Traffic Management (GATM) and not FAA certification.

Senator MCCAIN. I'm sorry that you don't know those simple facts, as Secretary of the Air Force, as to whether a tanker needs an FAA certification, particularly when you're using it as a justification for the increased outrageous cost of the tanker.

Secretary ROCHE. Senator, you recall, at your hearing, I said that I would get back to you for the record, that I did question myself on that. And, in fact sir, the history—

Senator MCCAIN. Again, I have to read from the record: Chairman, "Why do we need an FAA-certified airplane?" Secretary Roche, "A tanker has to be certified—FAA-certified airplane, sir, because it goes to lots of airfields around the world in many countries, it flies around the United States, the same way we can't fly certain drones over parts of the United States, because they're not appropriate."

Secretary ROCHE. I was wrong, sir.

Senator MCCAIN. End of statement.

Secretary ROCHE. I was wrong.

Senator MCCAIN. You didn't say you would get back to me.

Secretary ROCHE. Senator, you recall at the time, you said, "Hey, I've flown planes that were not FAA certified lots of places." I then said, "I'd like to get back to you." In fact, I had in mind—what occurs is that we use FAA updates for the airplanes. That's why we get them certified by the FAA, because they become the research group that tells us when there's safety-of-flight issues that have to be updated.

Senator MCCAIN. This is a small thing, but that's not true either. We do not regulate the operation of those aircraft, except for air-space limits, and we have not issued a certificate to the existing fleet of KC-135 tankers. That's not correct, either.

Mr. Chairman, I have no more questions.

Chairman WARNER. Did you, General Jumper, desire to respond to any of the comments made by our distinguished colleague?

General JUMPER. No, Senator. Thank you, sir.

Chairman WARNER. Secretary Roche, anything further?

Secretary ROCHE. No, sir, other than to say I was wrong about the FAA certification.

Chairman WARNER. Then let's close out on that issue.

Senator Reed.

Senator REED. Thank you, Mr. Chairman, and thank you to the witnesses here today. This subject is not only important to the Air Force, it's important to all the Services, and I think that should be put on the record.

General Jumper, you, I presume, personally selected General Gilbert to be the commandant.

General JUMPER. No, sir, I didn't. That was my predecessor.

Senator REED. So you had no involvement in his selection?

General JUMPER. No, sir, I did not.

Senator REED. Now, you became Chief of Staff in September of 2001?

General JUMPER. Yes, sir.

Senator REED. He became the commandant in 2002, but he had been pre-selected by——

General JUMPER. No, sir, he was the commandant during 2001. General Ryan selected him. I met him after he became commandant. He was commandant certainly by October or November of 2001, because I met him in Washington for the first time.

Senator REED. I have the report here and it might be a mistake in the report, but it has a list of the Academy commandants, and General Gilbert is August 2002, it says is his date, to 2003. General Jumper is September 2001 to the present.

General JUMPER. 2001.

Senator REED. That is a mistake, then?

General JUMPER. Yes, sir, I believe that's a mistake.

Senator REED. Then that report should be corrected.

In your contact with General Gilbert, I presume he must have come in for some type of briefing or interview shortly after you took over. Is that correct?

General JUMPER. Sir, actually, I think my first contact with him was when I visited out there shortly after, but, yes, we did have a discussion.

Senator REED. He raised none of these issues about climate, about anything?

General JUMPER. Actually, sir, early on, when I first met him, he had been involved in some of the general-officer preparation courses that we have, and he had been also, I believe, operated on for a knee problem. In our first engagement, he really had not had a chance to become thoroughly involved in the situation.

I did have a conversation early on with General Ryan, my predecessor, who told me that when he selected General Gilbert, it was to go out there and to deal with an emerging drug problem and discipline problems with regard to the neatness in the dormitories and the like. That was the charter to Gilbert early on.

Senator REED. So based on your comments today and your response to my question, is that no one——

General JUMPER. No one knew.

Senator REED. No one alerted you to the issue of this pervasive sexual misconduct.

General JUMPER. That's correct, sir.

Senator REED. Secretary Roche, your position is the same, that no one——

Secretary ROCHE. Senator, for my track record, for better or for worse, I act very quickly. General Jumper is the same. If someone had told us that there was a pervasive problem—I can assure you if we jumped on recruited athletes and we jumped on curriculum changes and we worried about drugs and—in fact, the one case of the 13-year-old, we found the Academy was handling it so badly, we took the case away from them, the relationship with the parents, and had it done by our General Counsel, immediately, as soon

as we found out about it. In fact, as soon as Senator Allard let me know about it and I did my homework, we sent a group out there to deal with it. We would have jumped on that, for a number of reasons. One, I live in Annapolis. I have watched what has happened to the Naval Academy. I would be very hypersensitive to this issue had it come up. When asked, we were told this is a model program, it's being used as a benchmark by the other academies.

Senator REED. Are you gentlemen familiar with General Wagie, who was the dean. Are you familiar with him, General Jumper?

General JUMPER. Yes, sir.

Senator REED. Over an extended period of time?

General JUMPER. Yes, sir.

Senator REED. It appears, in the Fowler Report, that he was the key staff person who ran these programs, who collected the data. Apparently, in your contact with him, he never made any revelation of this situation, although for, I think, upwards of 16 years, he was seeing mounting evidence of this?

General JUMPER. Over a period of time, sir, he was in charge of gathering the surveys, the surveys that, I might add, never got to the attention of the leadership of the Air Force. For various reasons, the surveys were discounted, and those are a matter of record. We are in the process right now of replacing him and looking for his replacement. There was some concern that the way that his replacement had to be selected was from the existing tenured professors at the Air Force Academy. The Secretary was not happy with that, and neither was I, and we didn't want to undertake a search under those constraints. So that was the reason for the delay in taking any action with regard to the dean.

Secretary ROCHE. May I, Senator?

Senator REED. Mr. Secretary, please.

Secretary ROCHE. General Wagie is the academic dean. As the academic dean, he did not have any disciplinary authority, but he certainly had all of these people reporting to him, and he was a repository of knowledge. It is clear the superintendent let down his colleagues. We are now forming the search committee. We're going to ask that one of the other academies, if possible, provide someone to that search committee. We have to work only with permanent professors until the law is changed. The committee has been very good in trying to see if they can move that law.

One of the concerns about just pulling him out would be not having an academic dean and concerns as to how the issue of accreditation would be handled by the Western States, who do the accreditation of the university.

Senator REED. Mr. Secretary and General Jumper, none of these issues are easy, obviously, but it seems to me that this is contrary to your previous assertion, Mr. Secretary, that you haven't taken dramatic action, that, as I read the Fowler Report, the one person at the Academy that for 16 years discounted these issues, these surveys—I can't think of anyone at that level who would claim that they're just invalid surveys and not go out and fix the surveys.

Secretary ROCHE. I agree.

Senator REED. Yet he remains on post, on duty, because you're worried about accreditation. Again, I think part of—this is not the

key point—but part of the difficulty we have is that the urgency comes, but it comes after—too many days have passed.

But I don't think we'll get to the bottom of this here, because this is not exactly a forum that's going to discover precisely what was done and when it was done. This is also an opportunity to raise questions, but I don't think it'll provide any definitive answers.

I will conclude where I began. The esteem of the Academy, the Air Force Academy, is something that's critical to all Americans and to every service member, and it's been severely challenged by these incidents.

Thank you, gentlemen and Ms. Walker.

Chairman WARNER. Senator Allard, you're next, but if you'd allow me just to make an observation.

Yesterday, I was visited, General Jumper, by some venerable Virginia Military Institute (VMI) graduates, of many years past, and I was reminded of the enormous pride of the State of Virginia, in having VMI in our State. I know, Senator Allard, how the people of Colorado have an enormous pride in the Air Force Academy, being a part of your State. I hope they appreciate the efforts that you have made from the very beginning in this case to try and ascertain what the problem was and how best you and others can rectify it. The people of Colorado would want you to do that, and I thank you for the service that you've rendered thus far.

Senator ALLARD. Thank you, Mr. Chairman. You're right, the people of Colorado take tremendous pride in the Air Force Academy. If you visit Colorado, one of the things that you visit is the Air Force Academy, in addition to the mountains and everything else. So we do take good pride, and we're obviously interested in making sure that this is an institution of high quality. Like a lot of Members in this institution, the U.S. Senate, I help select individuals who attend that Academy. Like all of you, we want to make sure that once we've made those recommendations, that they get a good-quality education and a type of education that will allow them to serve the country with distinction.

Chairman WARNER. I wish I could take credit for selecting General Jumper to go to VMI, but I didn't. [Laughter.]

You're a distinguished graduate of that institution.

General JUMPER. Thank you, sir.

Chairman WARNER. You hold it dear to your heart.

General JUMPER. Thank you, Mr. Chairman.

Senator ALLARD. I just have a couple of brief questions about the current leadership, and then I'll get into some other questions in more detail. I was glad to hear, Mr. Secretary, that you'd just been out to the Air Force Academy. General Rosa's been at the Academy now for 3 short months. How would you assess his performance so far? Quickly, if you would, please.

Secretary ROCHE. He was spectacular. We spent a long time interviewing candidates. I think you know each of the candidates has been hand-selected by General Jumper and myself. Both he and General Weida had prior experience in an academic institution. They are both doing spectacularly well. Our concern is that they not flag.

Senator ALLARD. Thank you. Okay, now, General Weida, you think his performance has been as admirable?

Secretary ROCHE. Absolutely.

Senator ALLARD. Okay.

Ms. Walker, you testified before the Fowler Commission, on June 23, 2003, on Air Force's Working Group's report. During that opening hearing, you stated that, "I felt like the issue"—and you were referring to sexual assaults—"personally was overblown and inaccurately portrayed." Is this still your belief?

Ms. WALKER. That was a specific question directed to me regarding the press articles on the issues. They asked me if I believed the issues had been fairly portrayed in the press. Remember, this was in June, before the press had—basically, just received our report, and the early press reports were really ones that involved a lot of speculation. I said, at the time, I did not believe those articles had fairly portrayed the issues. I was hoping that, in light of the report and the full analysis, they would now have the full—

Senator ALLARD. Let me ask you this question, then.

Ms. WALKER. Yes.

Senator ALLARD. Do you feel, now, that the issue of sexual assaults has been overblown and inaccurately portrayed?

Ms. WALKER. The way you phrase it, sir, the answer would be no. I don't believe the issue of sexual assault at the Academy has been overblown.

Senator ALLARD. I'm just trying—

Ms. WALKER. I believe some of the articles have not fairly set forth all of the parameters of the issues.

Senator ALLARD. But, I mean, we've had two surveys. You have the one that was done by the Department of Defense Inspector General, and said that there was definitely a problem there—indicates there's a problem.

Ms. WALKER. Oh, absolutely. Right. We had one.

Senator ALLARD. You just now have another report coming out that was just put out by the Air Force, says there's a problem.

Ms. WALKER. There's no question—

Senator ALLARD. My question, again, is, do you feel like the issue of sexual assaults has been overblown or inaccurately portrayed?

Ms. WALKER. Okay. The answer to that would be no, it has not been overblown. But you were asking me about a question to which I directed my answer—

Senator ALLARD. Initially, I asked you a direct quote. You qualified it.

Ms. WALKER. Right.

Senator ALLARD. I came back with a direct question.

Ms. WALKER. Yes.

Senator ALLARD. So I really wanted to know what your attitude was today.

Ms. WALKER. No, absolutely not.

Senator ALLARD. That was the purpose of my question.

Ms. WALKER. We have a very big problem, and it isn't one that's solved with just one report or one study. It will take time and energy of all the leaders to make a real change in the institution that is necessary.

Senator ALLARD. According to the Air Force's Working Group report, a number of cadets—and this is for you, Ms. Walker—who were suspected of committing a sexual assault graduated from the

Academy over the last 10 years. Do you have any idea how many of those cadets went on to serve in the Air Force?

Ms. WALKER. These are just suspects. They are not those who were convicted or found to be——

Senator ALLARD. Suspected of committing a sexual assault, that's correct.

Ms. WALKER. Right. I don't have that percentage, sir, but we could do that.

Senator ALLARD. Actually, I'm not looking for percentages. I'm just looking for an actual number.

Ms. WALKER. Right. I don't have that at my command, but we could provide that to you, because we would know all of the disposition on the cases where there was a subject and there was an investigation. Absolutely.

Senator ALLARD. Sure. I think that would help us. We'd like to have that as part of the committee record.

Ms. WALKER. Okay, we'll be happy to provide that.

[The information referred to follows:]

Eighteen cadets who were alleged to have committed sexual assaults between January 1, 1993 and December 31, 2002, (the period considered by the Working Group) have graduated from the Academy and were commissioned. (The report of the Working Group, based on information from an Academy database, indicated that 19 suspects had graduated. Review of that information after the report was published revealed that one of those suspect's records had been coded erroneously and the suspect had in fact been disenrolled.) Of the 18, one was cross-commissioned into the Army and remains on active duty in the Army. One, who had already been commissioned at the time the allegation was made, received a letter of reprimand and has now separated from the Air Force. Another is now deceased. Of the 15 currently on active duty in the Air Force, one is still under investigation for the alleged assault, in one case the allegation against the suspect was recanted, and one was acquitted at court-martial. There are ongoing DOD and Air Force Inspector General investigations. In addition, Secretary Roche has asked the Air Force IG to examine the commissioning suitability process in these cases. After completion of these investigations, Secretary Roche will examine the findings to determine what follow-on steps may be appropriate.

Senator ALLARD. Then, of those that went on to serve in the Air Force, also, how many are still serving in the Air Force would be helpful.

Ms. WALKER. Realizing some were found innocent, if they were, and then——

Senator ALLARD. Then you can put a qualifying note on them.

Ms. WALKER. Exactly.

Senator ALLARD. Yes, that would be fine.

You mentioned, in your opening comment, about the 13-year-old who had been raped at a summer camp.

Secretary ROCHE. Assaulted, sir. Assaulted, not raped.

Senator ALLARD. Assaulted, you're right. Yes, and eventually there was a guilty plea of consensual sodomy, to be more specific.

Secretary ROCHE. Yes, sir.

Senator ALLARD. Okay. That was an Article 32 hearing. The cadet in that case had 60 days in jail, dishonorable discharge, then had to pay \$120,000. Now, the girl, the 13-year-old victim, was never allowed to testify at the hearing. Why was that?

Secretary ROCHE. Senator, I don't know. It's the issue that I brought up earlier, of a case that we thought was not handled well by the judge advocates, that the parents were ignored, when they should not have been ignored, that a deal—whatever the proper

word is—between the prosecution and defense was made, without the prosecution dealing with the parents to see how they would react. I found it very disturbing. I also found it very disturbing that the parents were just surprised by this and that there were some other senses that they had in terms of how people in their neighborhood and the girl's school had been dealt with. So I directed the General Counsel to dispatch lawyers out there and to take over the handling of the matter, but it was after the court martial had concluded.

Senator ALLARD. It's my understanding now that the Air Force lawyers have not resolved the issues of that rape with the family. Are you aware of that?

Secretary ROCHE. There are claims that the family is making, and they're being discussed and debated. Yes, sir.

Senator ALLARD. Yes. I'm concerned about how these discussions are going, but I'm glad to hear that it's on your radar and that you're watching it very closely.

Secretary ROCHE. Oh, yes, sir.

Senator ALLARD. The Fowler Report mentioned four specific Academy officers, three of which have been relieved of their command at the Academy, and the only remaining officer is General Wagie. It's already been brought out about how involved he was in being a filter through all these reports. I'm not sure that I got a clear response from you, and my question is, why is he still at the Academy?

Secretary ROCHE. Senator, it is my judgment that because he's the academic dean, and the Academy is also a university, and there are accreditation issues, that to pull him and have an absence of an academic dean for a long period of time was, in the midst of all the other turmoil, not the right thing to do, that although he was the individual to whom the center reported and who was responsible for the surveys, he was not in the disciplinary chain. He did nothing to or had any interaction with the young women who filed complaints, that we had to replace him as soon as possible, and we are doing that. He will retire as soon as we can get a replacement. We have tried hard to see if we can change the law so we could have a broader look, including a possibility of a civilian dean. The law now states we must take a permanent professor. Sir, you recall we have relieved one permanent professor of his job, so we're trying to be careful who we bring in behind General Wagie, but he'll be retired by the early spring.

Senator ALLARD. Will there be any further discipline, other than just a retirement?

Secretary ROCHE. When he retires, Senator, then we have to make a judgment as to whether he served properly in grade, and we'll made that judgment at that time.

Senator ALLARD. You mentioned the difficulty in dismissing permanent professors at the Academy and ran across that with the English professor. You talked about the Monty Python skits that were going on there. Can you share some of your views about permanent professors at the Academy?

Secretary ROCHE. Yes, sir. In the Agenda for Change, we have taken steps within our bounds of what we can do, in terms of how long they would be expected to serve. If they serve beyond that, it

has to be with a waiver given by the headquarters of the Air Force. We want the Secretary, the Chief of Staff, to be very much involved in the choice of permanent professors so that we know what kind of people we have there. We have also said that department heads who are head of a department for these extended periods of time is not healthy, that we want turnover there. So we've also made a number of changes within the law on how these people rotate and what they do.

General JUMPER. Also, sir, if I might add, the lower-ranking professors come from the active-duty Air Force, they come in and out, and they bring the perspective of the current Air Force, contemporary Air Force, to the Academy.

Senator ALLARD. Do you feel that we need to change the law in regard to who we put in as the dean of the university?

Secretary ROCHE. Oh, Senator, absolutely.

Senator ALLARD. We need to have a bigger pool, it seems to me.

Secretary ROCHE. Yes, sir. For instance, we don't know why we can't choose a civilian.

Senator ALLARD. Yes.

Secretary ROCHE. To the best of my knowledge, the academic dean at the Naval Academy is a civilian. I don't see why we can't do that if there's a particular civilian who meets the qualifications as of the quality. But there may be another officer, another general officer, at Maxwell or somewhere else, who, while not a permanent professor, would be a spectacular academic dean and would, in fact, be someone that the accreditation group would say is fine.

Senator ALLARD. If we would get the law changed in this session of Congress, does that give you time enough to look beyond just permanent professors?

Secretary ROCHE. Yes, sir. What I've directed to happen is, we are going to start screening candidates among the permanent professors. We believe that between now and the next month or two, if you're going to be able to make a change in the law, it'll happen, and then, at that time, we will bring in other candidates, as well. If we can't get it changed this year, then I'm afraid we're going to go one more round with one of the permanent professors.

Senator ALLARD. Mr. Chairman, I see my time's expired.

Chairman WARNER. Senator, in the discussions you've had with me and our distinguished ranking member, I think we're looking at trying to get it in as part of the legislative package with the \$87 billion supplemental appropriation, aren't we? Or in the Defense Authorization bill.

Senator ALLARD. Or the conference report. It would be on the conference report.

Chairman WARNER. And/or both. Because we regard it of tremendous important, this position.

Secretary ROCHE. Mr. Chairman, there's two things you're doing for us that we really appreciate. One is permanent professors, and the other is to change the rules on the board of visitors to make the board of visitors a much more energetic and much more focused group, and we appreciate both of those.

Senator ALLARD. Mr. Chairman, I'm on the board.

Chairman WARNER. Are you familiar with that provision?

Senator ALLARD. I agree wholeheartedly with that provision, as far as the board of visitors——

Chairman WARNER. Do we need Congress to energize a board?

Senator ALLARD. Yes.

Chairman WARNER. Wait a minute. You're on some interesting grounds there. I really want to do everything we can to help you on that issue. I don't mean to treat it lightly. Because, the Fowler Panel exhibited some real courage to stand up here before the Congress of the United States in the face of one our colleagues, who, in the course of the hearing, was a member of that board.

Senator ALLARD. Right. Part of the recommendations is to reduce the number of members on that board, for that very reason, who are in Congress.

Chairman WARNER. I think the board is a very important institution. I know that when I was privileged to have your position, Mr. Secretary, I labored long and hard over the recommendations for membership on that board.

Anyway, occasionally I've had the opportunity to go on the Naval Academy board, based on my modest association with the Navy and the Marines over the years. I just felt I didn't have the time to devote to it here in Congress.

Secretary ROCHE. It's an issue of time.

Chairman WARNER. So we'll work on both provisions.

Senator ALLARD. Thank you, Mr. Chairman.

Chairman WARNER. Do you have suggested language with regard to the board?

Secretary ROCHE. I think we've already worked with your committee on that, sir, this year.

Chairman WARNER. But you're comfortable with the language we're looking at with regard to the——

Secretary ROCHE. Yes, sir.

Chairman WARNER. I thank our colleague from Maine for the time that I took for those questions.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman WARNER. Thank you for the many hours that you've spent on this case, too.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman WARNER. This is another one of your agenda items. You've spent a lot of time on it. You've been to all the meetings, just about, in my office on this question.

Senator COLLINS. I appreciate your leadership, and that of Senator Allard, on this very important matter.

Mr. Secretary, you have repeatedly said that if someone had told you there was a pervasive problem, you would have acted. You've said that you would have had to have been clairvoyant to know that these problems existed. You've also testified, at the March hearing, that shortly after you became Secretary, you and General Jumper started to spend, "more and more of our time looking at the Air Force Academy. We spent a year looking at the honor system." I'm wondering, with that kind of in-depth review, how you missed the many indications and reports of problems with sexual assault at the Academy.

There is ample evidence that reveals that sexual misconduct problems at the Academy have existed, at a minimum, since 1993.

For example, there are three different GAO reports—one issued in 1993, one in 1994, and one in 1995—which identify issues of sexual harassment at the Academy. In 1996, the Air Force Surgeon General notified the Air Force Chief of Staff of serious sexual misconduct at the Academy. In 1997, a team of lawyers at Air Force headquarters recommended changes in the Academy's sexual assault reporting procedures. In 1998, the Chief of Sexual Assault Services provided a briefing to senior Academy leadership, which began with a slide titled "We have a problem," which referred to Academy statistics on sexual assaults.

There were numerous cadet climate surveys in which cadets identified problems with sexual assault. In 1998, 22 cadets said that they had been sexually assaulted. In 2000, 17 reported that they had been sexually assaulted. In 2001, 167 cadets indicated that they were sexually assaulted. In 2002, 80 cadets said that they had been sexually assaulted. In 2003, interestingly, they were not asked the question.

You were sworn in as Secretary, I believe, on June 1, 2001. If you did an in-depth review of the Academy with General Jumper, how did all of these reports, year after year, going back to 1993, from credible sources—such as the General Accounting Office, such as the Surgeon General, such as the Chief of Sexual Assault Services, such as the cadet surveys, which, even if you argue with some of the statistics, they clearly show a problem—how could you miss this?

Secretary ROCHE. Senator, I understand your question. There was no process in the Air Force for any of that material to come to headquarters. When we would go out to the Academy to go after an issue like the honor code or something else, we were triggered by something, either a press article or, in the case of the honor code, by the study that General Ryan and Whit Peters had asked General Carns to perform. None of these things came to our attention.

The 1996 material from the Surgeon General, for instance, I saw for the very first time in mid August of this year. We were not aware of it. The GAO reports from the early 1990s, I didn't go back to ask if there were GAO reports, nor did General Jumper. You'll recall, ma'am, not as an excuse, but there was also September 11 and a war in Afghanistan, other things.

When something was brought to our attention, we went and addressed it. When the question was asked of people, because of my familiarity with the Naval Academy, "What is the gender climate like," we got the answer that this was a model program that had been put in in 1993, it was addressing issues, and there was no sense that there was anything different than that, when, in fact, it certainly was. We were never told about surveys, et cetera.

What I can say, Senator, is, the Air Force should have put in place mechanisms of transparency to the headquarters of what was going on in the Academy. Right now, they exist. This can never happen again.

Senator COLLINS. Ms. Walker, my question to you is very similar. In your report—and Senator McCain has quoted this—you concluded that the Working Group did not find, "systemic acceptance of sexual assault at the Academy, institutional avoidance of respon-

sibility, or systemic maltreatment of cadets who report sexual assault.”

I don't know how you could have reached that conclusion if you did even a cursory review of the cadet surveys and of the many, many reports and other evidence from credible sources that I outlined in my question for Secretary Roche.

Ms. WALKER. When the staff brought me that conclusion, toward the middle of the report-writing, I asked the question, “Given what we found, how can we support this?” Basically what I was told in the presentation of the evidence was—and I actually think Ms. Fowler's comments in her testimony, as opposed to the report, support this—that this was a case of good people, well-intentioned, realizing there were issues, addressing them, putting programs in place, putting training in place, meeting with the female cadets, and believing they were addressing the issue. But still, over time, there have been issues of sexual harassment that haven't gone away, and there have been sexual assaults that continue to happen. So we believed that there were issues that had to be addressed that were not working, despite the well-intentioned programs. But they did not, as a matter of course, accept sexual assault. There was not an avoidance of the issue. Every single time we found there was an issue, they addressed it, they thought they had it fixed.

I think that that's part of the problem. They really did think they had it fixed, but they didn't. As we looked at the 10-year period, it continued, such that they hadn't had it fixed. But I will tell you today, based on the information that we've received, we might not have had those conclusions in place. As I said to Senator McCain, I believe the conclusions would have been different. But based on the information we had, and if you look at the leadership section in the back of the report, you will see a continued parade of leaders who recognized there were issues and attempted to deal with them. That's what we meant by there was no avoidance of the issue. They stepped up to the plate. They just weren't able to effectively fix it.

Secretary ROCHE. May I, Senator? May I answer that?

Senator COLLINS. Certainly.

Secretary ROCHE. The part that shocked me most when I read the 1996 material, now last month, was that I could no longer, in any way, agree with two parts of the general assessment, that there was no systematic acceptance of sexual assault because the top leadership of the Air Force knew something and didn't do anything about it. I don't know all the details. All I know is that there was something that was here in Washington, and I don't understand why they didn't jump on it.

No institutional avoidance of responsibility—again, I would have to agree with you, once you see that, you are compelled to go out and start to dig. I wish someone had provided that to me in June 2001, or at any other time, or to General Jumper. We are of the same personality. We would have attacked it.

Senator COLLINS. I can't think of a clearer pattern of avoidance of institutional responsibility than to ignore this many reports going back a decade. Because these aren't isolated. They're year after year, from highly credible sources.

Secretary ROCHE. In the surveys, we wish the surveys had been sent to the headquarters. We wish there was something at the headquarters that gathered them. All I can tell you is that, now and in the future, that sort of a situation where things are kept close at the Academy, can't happen.

Senator COLLINS. General Jumper, in the executive summary of the Fowler Report, there is a conclusion that reads as follows, "Since at least 1993, the highest levels of Air Force leadership have known of serious sexual misconduct problems at the Academy." Do you agree with that conclusion?

General JUMPER. I do.

Senator COLLINS. Then why didn't anyone do anything about it?

General JUMPER. Senator, I think people thought they were doing something. That's when the CASIE system was started, in 1993, by General Hosmer. That was set up and was touted as a model program. Up until last year, we had other people coming to us to use that as an example. As a matter fact, that answered the 1993 GAO survey. Then, for a period of time, we thought we had, the Air Force Academy thought it had, and the leadership thought it had, a model program that was in place out there. The fact that these surveys that should have come forward didn't come forward, there's no excuse for that, Senator. There's no excuse. We are jumping on that problem, and it's not going to happen again. The fact that the superintendent of the Air Force Academy didn't properly communicate with the Secretary and the Chief of Staff of the Air Force on these issues is, there is no excuse for that.

So our Agenda for Change is one that we hope will put in the changes that will effect lasting and enduring change so that these sets of conditions cannot be repeated, and that the oversight for the Air Force Academy is in place and will remain in place.

Secretary ROCHE. Senator, if I, again, may?

Senator COLLINS. Would you indulge me with one final question?

Secretary ROCHE. May I make a comment, ma'am?

Senator COLLINS. Certainly.

Secretary ROCHE. Very quickly. It is that the standards—

Chairman WARNER. Let's have the witness—this a very important inquiry—give adequate time for their responses.

Senator COLLINS. Right.

Chairman WARNER. Had you finished, General Jumper?

General JUMPER. Yes, sir, I had.

Chairman WARNER. Mr. Secretary?

Secretary ROCHE. The standard that I raised earlier of, did someone put a barrier or was there information that would lead a commander to make a different decision, is the standard that General Jumper and I will use to judge each of these officers. The basis for that will be the work done by the Working Group plus the work done by the IG staff, because quite often, Senator, these are issues of, "How do you feel about a commander's performance? Did the commander live up to the standards we expect of our other commanders?" In the case of the superintendent, for instance, a three-star general is exactly the rank of the officer that was running the war in Iraq. We demand enormous things of these people. Given the evidence, we would have expected them to have acted and him to have acted.

Senator COLLINS. Mr. Chairman, I know my time has expired. Could I ask just one more question?

Chairman WARNER. Go ahead.

Senator COLLINS. Thank you.

Ms. Walker, are you aware of the survey of the female cadets of the class of 2003 that was conducted by the Inspector General?

Ms. WALKER. Yes, I'm aware of that.

Senator COLLINS. What was your reaction to the statistics that showed that nearly 12 percent of the women in the class of 2003 reported that they were victims of either rape or attempted rape, and I believe it was 24 percent reported that they were victims of sexual assault or attempted sexual assault? Did that cause you to rethink your conclusion that there was not a systemic problem?

Ms. WALKER. Let me just try to take this in pieces. First of all, any numbers like that would be of concern. The numbers that the IG found in his survey were higher than the numbers that we had had, but not terribly inconsistent with them. I think the percentages that were showing up in the surveys were 15 percent, 16 percent, something like that. So they were not totally dissimilar than the survey numbers we had.

But we had a couple of factors here that caused us to not fully understand or trust the data. First of all, the definition of sexual assault in use at the Academy included those things which were not sexual assault.

Senator COLLINS. Then limit your response to the definition of rape and attempted rape, which is the legal definition. It's still almost 12 percent.

Ms. WALKER. I'm not minimizing the fact that there is a problem at the Academy dealing with sexual assault, and I've said that. There is a problem, and leadership is dealing with it. We recognized that in the report, that there is problem, and that has to be dealt with.

So, yes, we were concerned. We were concerned the whole time we were doing this report. But, again, the fact that the Academy recognized they had an issue and were trying to deal with it is what we were trying to say, that they weren't avoiding it. They were putting things in place to deal with it. When they thought they had dealt with it, what we saw, over time, was that the problem wasn't going away. There were still issues of harassment. At the end, they weren't functionally working well together, so the victims were not being treated as they should be, and that's why we made the recommendations that we did, based on the findings that we were able to make.

Senator COLLINS. Thank you, Mr. Chairman.

Chairman WARNER. Have you had enough time?

Senator COLLINS. I have. Thank you.

Chairman WARNER. I try, as a chairman, to listen very carefully. If I heard you, in response to this important question, you said, "I'm not in any way trying to deny there is"—that's present tense—"a problem at the Air Force Academy." Now, I think the Secretary started with a very dramatic opening sentence, "Tonight, there is no problem." Wait a minute. Am I correct? I want to get this right.

This hearing is being followed, and let's get—between the two of you, sort out your—

Secretary ROCHE. If I may, sir?

Chairman WARNER. Yes.

Secretary ROCHE. What I said was, the young woman cadet is safe tonight at the Air Force Academy.

Chairman WARNER. That connotes to me there isn't a problem, and she can freely move around the halls and enjoy the Academy's benefits.

Secretary ROCHE. She can, but she may wind up at a party somewhere and still have a problem. She could be in a parking lot and we not be able to cover it. It doesn't mean that it's a 100-percent guarantee; it means all of the things we can think of to accord her protections that she should have are now in place, including having officers and enlisted and other cadets doing roving patrols of the dormitory 24 hours a day, 7 days a week, which is putting enough of a strain on the Academy that we are going to have to assign more billets out there. All of the things to protect them. Any barriers to reporting have been removed. So, on that basis, a woman is safe.

However, the attitudes of our cadets are something of which we are not proud. We are not proud that 20 percent of the males believe that women should not be at the Air Force Academy. We are not proud that only 10 percent of the women in one class believe that they would report an assault, because they might be ostracized. We're not proud of that at all, nor is the new team, but we are working at it, and working at it, and working at it, and we'll continue to do so, Senator.

Chairman WARNER. That's important. Then that clarifies, I believe, your comment.

Ms. WALKER. That's really what I was speaking to, sir. I believe that what needs to be done is being done, but I also don't believe that we can claim victory yet, because it's going to take some time to see this play out.

Chairman WARNER. I want to be careful with this "claim victory." So let's work on it.

I think I get the message. I hope that you're doing everything you can. I don't want to interrupt the next Senator, but I guess I leave with a heaviness of heart that this institution has had to employ such measures as guards, and patrols and frequent checks. I hope there's joy left.

We'll return to that at some point in time.

Senator Clinton has spent a lot of time on this issue and attended all of our hearings. Senator, it is your turn.

Senator CLINTON. Thank you, Mr. Chairman. I apologize that other commitments required me to leave this very important hearing. I have tried to follow, from a distance, the questions that have been asked, and obviously I know that our panel appreciates the extraordinary and profound concern and sadness that I think all of us feel about this situation.

I don't want to go over already plowed ground, but I wanted to ask a few specific questions, which I don't believe have been addressed. It is more in the terms of going forward.

We heard, last week, from the panel that reported to this committee, that, in their report, they are critical of the effective elimination of confidential reporting, as called for in the Agenda for

Change. The panel found that the Agenda for Change's elimination of confidential reporting, "creates a significant risk that victims will not come forward at all, and, thus, lose the benefits afforded by professional counseling," to say nothing of the issues about reporting assaults and improper conduct. In light of the panel report, Mr. Secretary and General, will you reconsider the value of confidential reporting?

Secretary ROCHE. Yes, ma'am. One of the wonderful things about that panel is we were able to have a dialogue, and they were as torn as we between privacy and confidentiality, between the fact that we were developing aspiring officers, who have an obligation to tell us when there's a felon in their midst. The work that they came up with, the notion of the psychotherapist who can provide counseling and not be part of the chain of command, so that we can worry about a particular cadet who has gone through trauma and deal with the trauma of that cadet and then try to bring her to the chain of command, where we can then avoid the problems of the past, where nothing happened, or even if we can do such things. One of their witnesses testified that there's not an inherent conflict if you think of it on a temporal basis. If, right away, you do what you have to do, in terms of rape kits, et cetera, but you tell the young woman, "Look, we're not going to go forward until you're okay and you're ready, but should you choose to go forward, we don't want to be precluded in prosecution because we don't have evidence." Ms. Fowler and I have spent hours trying to think that through.

One of the things that General Jumper and I are doing is we're going to look at the suggestions there, not just for the Air Force Academy, because if it's good enough for one of those young women, it's good enough for one of our young women at Kunsan Air Base. Do it for both.

Senator ALLARD. Would the Senator yield on that?

Senator CLINTON. Yes.

Senator ALLARD. That's really an important issue, and visiting with the chairman on the Fowler Commission, she had indicated that this is something that the commission really struggled with. Finally they went to the Naval Academy, and my understanding is that this is the process that's currently followed in the Naval Academy, or something very close to it, where they actually have a turn in the road here. You can either go with a public disclosure or go with the publicity of going to the psychotherapist and the patient-doctor relationship there, keep it private if they decide to do that. So your response to her question is that, yes, you think there is a possible credible solution.

Secretary ROCHE. We want to work at that, Senator, and we think there is a way to do it, but we don't want to do it just for the Air Force Academy. We want to do it for the whole Air Force.

Senator ALLARD. Senator, that's a very important question that Senator Clinton brought up, and thank you for letting me interrupt you on that.

Chairman WARNER. Your time will not be docked for the colloquy, without objection.

Senator CLINTON. Thank you, Mr. Chairman. I appreciate my colleague, Senator Allard's, intervention there, because no one has

worked harder on this issue. I think, in addition to Annapolis, I believe West Point has a similar approach. So I think that it is important that the Agenda for Change be changed in light of the panel's findings and further consultation with experts.

I think it's also important to look at the Agenda for Change with respect to the panel's conclusion that it did not address the need for permanent, consistent oversight by Air Force headquarter leadership, as well as external oversight by the Academy's board of visitors. In fact, I think Chairman Fowler made a very telling point when she said that oftentimes the members of the board of visitors didn't attend meetings and they weren't involved. It did not have either the prestige or the participation that one would expect.

So have you done any self-examination about what better oversight and leadership can be provided by both headquarters and the board of visitors?

Secretary ROCHE. Yes, ma'am. Already, we have in place a mechanism to provide the oversight of the Academy that has a senior-level group, which consists of the Vice Chief of Staff of the Air Force, on the uniformed side, the Assistant Secretary of the Air Force for Manpower, to represent me, the General Counsel, and the superintendent. There is a working group below that. We put a 1-year sunset clause on it in order to get everybody to get everything done from these panels in 1 year. But it's our intention, and the Fowler Report commends us for this and recommends that we institutionalize and make it permanent. We will do so, so that we don't have a situation like the one that Senator Collins raised earlier, of things never coming up to senior-level attention.

Senator CLINTON. Finally, Secretary Roche, I have been discussing with you the importance of mentors and role models in setting acceptable standards of conduct for cadets. In their report, the panel includes several recommendations for better training of cadets. It recommends that the staff and faculty place a renewed emphasis on education, on character education, on the encouragement of responsible consumption of alcohol by cadets, and that, overall, the panel found that the Agenda for Change did not go far enough to institute enduring permanent changes in culture and gender climate at the Academy. Now, I assume you also agree that the Agenda for Change has not gone far enough in that direction.

Secretary ROCHE. It was the best that Jumper and Roche could do in 90 days. We were very willing to have it expanded, to be challenged. In fact, the cadets have given us some good ideas, and we will follow up with each of those items, because we think there is more to do.

We have some good news, finally. The selection board for Air Officers Commanding Program this time at the Academy picked the best, and the system provided them, instead of giving them 50 reasons why it can't happen. We are sending people off to school. One cadet suggested we were not teaching the Uniform Code of Military Justice early enough to cadets. We now have changed that, and early on when they get there in this fall semester we'll be doing a lot of education about the Uniform Code of Military Justice.

Through all this, Senator, an interesting point to the chairman about joy, is that the cadets are now feeling a heck of a lot better about themselves and the place, and they're actually starting to

have some fun, because they know what the boundaries are, they know how serious we are, and they're making the point that the morale has improved dramatically this year, as compared to this point last year.

General JUMPER. Senator, if I might pile on, let me just say, once again, that there's no belief on the part of this set of leaders that this is a short-term problem with a short-term solution. So that the character and the integrity issues, the honor code issues have to be dealt with over a period of time. This is going to be a subject of intense education through engagement by our own four-star-level officers with the cadets, personally. We've already begun that, and it's going to take awhile.

Senator CLINTON. Mr. Chairman, I know my time is expired.

Chairman WARNER. Senator, if you want to take another minute or two, please.

Senator CLINTON. I think this might also be useful. I've spoken to the Secretary about this and will certainly try to provide some names of people who could be helpful. But I think it would be useful to invite some outsiders, perhaps, to address the cadets on some of these issues, and I would particularly recommend some women leaders. I think of my colleagues, Senator Collins, Senator Dole, Senator Hutchison, Senator Landrieu, others, people who have served on this committee, people who have insight into the code and the standards of the military. I really, having now immersed myself in the information, and particularly the impressive work of the panel that we heard, there's a real disconnect on the part of many of these young men between the profession and the Service that they are pledging their lives to and the expectations that the leadership of that Service has, but, even more, the expectations of the leadership of their country and the broader citizenry has.

I think it might be useful to have some real airing sessions, perhaps, if she hasn't, with Chairwoman Fowler and others. I really do think that these young men, to be very blunt about this, need to see some women in leadership positions and need to have give and take, and need to hear—

Secretary ROCHE. Right.

Senator CLINTON.—from women of stature and position, that times have changed, and that to be a leader today means more perhaps than it did in the past, in terms of sensitivity. It is troubling to me to think that among the many efforts that young men and women in the Air Force have undertaken in the last 2 years to free women in Afghanistan and free women in Iraq, and then to hear about attitudes of young men at the Air Force Academy that are very reminiscent, frankly, of those attitudes that were part of the Taliban's approach, part of the reaction toward women going to school, being part of leadership.

So I think that perhaps some kind of a speaker session, some kind of an effort to really present the cadets with leadership examples and to challenge them and to challenge the ideas that they may have either brought with them or acquired, would be a start to this process.

Secretary ROCHE. Senator, we agree. In fact, we are organizing some things.

There's a little bit of good news. About 3 weeks ago, for the first time in the history of the Air Force, we awarded four distinguished flying crosses for heroism in battle to women aviators. First time. Now, when they go to the Academy, no male—no male—can look down on them.

Second, we began training pilots, women pilots, in 1978. The first class of graduates was 1980. That class and the two following—the 1978, 1979, 1980 classes—are just now coming up to general officer ranks. They're not going to be specialists. They're going to be honest-to-goodness pilots, navigators, et cetera, who will be the right role models. I think we are only one generation away from a commandant who's a woman, general, pilot, line officer, and, not long thereafter, a point we will have a woman superintendent.

But there are increasing role models, and we've found that the Academy brings in the wrong kinds of people. In a management course, for instance, Senator, instead of bringing in successful Air Force officers who were graduates, they bring in successful businessmen who left after 5 years and went out and made a lot of money. When we found that out, we said, "well, that's silly. There are a whole bunch of terrific officers who are serving in active duty. Why don't you bring them in? Or bring some retired officers in, not bring businesspeople who left right away." So we are working on that.

Senator CLINTON. Bring some women in.

Secretary ROCHE. Absolutely, ma'am.

Chairman WARNER. That's a very encouraging chapter in this hearing today, that testimony you've just given, and joined in by General Jumper, and I thank you, Senator. I find it very encouraging.

I don't say what I'm about to say with any facetiousness. My good friend, Senator Levin, and I came here 25 years ago, and we have seen a change in this institution, and that change was, I think, very thoughtfully, carefully, and accurately put in that book, "Nineams Counting, The Women of the Senate." Maybe a few copies ought to be sent to the Academy for required reading.

Now we have to return to some of the hard parts about this case, which we still have to explore. I guess everybody draws on their own experience in the educational institutions, but I had, in my own modest career, some tough times in coming right out of the Navy in World War II and going to college. Then in law school, I got into a couple of ruts, but survived. Faculty members were just enormously important in not only working with me, but working with a whole range of students. They knew when a student was in need of a little help. I have some of the fondest memories of faculty members who worked with us and invited us to their homes in the evening for a little libation and discussion and private seminars. How is it that they were oblivious to this thing? Were there not a number of female members of the faculty to whom maybe cadets could turn to and say, "Can I reach out to you, as a civilian, and share my thoughts?" Can anybody address this?

General JUMPER. Sir, that's a very good question, and we have talked to members of the faculty as part of the people that we addressed. We've talked to the Air Officers Commanding, who are with the squadrons all day, every day. The answer is, no, they did

not come forward with any evidence the cadets had come to them with any specific problem. Again, it's difficult to explain. In the report, I don't think that there's any specific reference to this. But in my personal experience, in my personal conversation with this cross-section, I've cut it many ways, Senator. I went out there, I visited with the cadets that were going to be the seniors and the juniors this year, and I challenged them on their leadership responsibilities and told them that unless their attitudes changed, that there would be no change at the Academy. I met with Air Officers Commanding, with the enlisted people that are also, again, with the cadets every single day, with members of the faculty, with alumni, et cetera. I can tell you, sir—and you know me, sir; we've known each other a long time—

Chairman WARNER. Oh, yes.

General JUMPER. If any of this had been brought to my attention, I would have jumped on this with both feet, just like the Secretary would have, I can tell you. I can't explain it, but it was not a thing that was so high on the screen of the people that I talked to about this. As a matter of fact, other things were brought to my attention, so there was no fear about talking to me.

Chairman WARNER. That leads me to another question relating to some personal experience. I'm often asked, "What was your best job in life," and I have to tell you that my period in the Navy secretariat was just superb. I remember when the late John Chafee, our highly esteemed, beloved colleague, and I walked into the Pentagon, the Republicans had taken over, there were Democrats there, holdovers, and they sat down with us, and we spent some time with the Secretary of the Navy, who graciously stepped down, and the Under Secretary, and then the various uniformed people came up and shared. So there was a feeling of continuity. Now, it was a period in which the Vietnam War was at one of its very significant high pitches, and so there was a pressure on us that was quite serious. The country's at war today, and so I assume similar pressures are on. But there was a transition.

Then, through the years that I was there, they'd all come back and visit with us, "How're you doing?" I can't understand how some of these uniformed or prior-service Secretaries didn't come in and say, "How are you dealing with this problem. I tried my best," because let me draw your attention to this. It's rather interesting.

General Ronald Fogelman, a former Air Force Chief of Staff, was quoted in a media story last week as saying that the problem of sexual assaults at the Academy was "an issue that was known and being worked on at the Air Force and at the Academy. If we didn't take the right remedial action, that was our fault, but it wasn't for lack of trying or being engaged on the subject."

Somehow that filter that you feel was present during your administrations wasn't there. He had the facts. He worked on it.

Did any of the old-timers come in, such as General Ryan? I just have the highest regard for him. His father was chief of staff of the Air Force when I was Secretary of the Navy, and I've known the Ryan family for years. Didn't he come in and chat with you a little bit?

General JUMPER. Sir, yes, sir. We talked about it. Matter of fact, he gave me a list of things, in my turnover with him that had to

do with the drug problem that was emerging. It had to do with the academic curriculum that the boss was working on, with the honor code. But on that list of things was not a concern about sexual assault.

Chairman WARNER. All right. What about you, Secretary?

Secretary ROCHE. I had a couple of months with Mike. Mike, in particular, wanted me to concentrate——

Chairman WARNER. This is Secretary Whit Peters?

Secretary ROCHE. I'm sorry. This was General Ryan.

Chairman WARNER. Oh, Ryan.

Secretary ROCHE. General Ryan.

Chairman WARNER. General Ryan. Then you might address——

Secretary ROCHE. Whit Peters, to do both.

Chairman WARNER. —Secretary Whit Peters.

Secretary ROCHE. General Ryan was very concerned about the honor system at the Academy, and one of the things he did with both of us, like an older brother, is say, "Okay, here are the things you have to continue to do when I'm gone."

Whit Peters and I have become friends, and Whit and I speak. He had no sense of this, because he would have passed it on if he had had it. This is not a Republican/Democratic issue. Any one of us who knew this would have gone on and done something. Whit, in fact, had to deal with a different problem at the Academy having to do with an allegation of the misuse of funds for an elaborate kitchen in the superintendent's home.

Chairman WARNER. We remember that one well here. He was a good secretary.

Secretary ROCHE. But this particular issue never came up, even though we still deal with each other.

Chairman WARNER. I certainly speak for myself, but we thought Whit Peters did a good job, and he was before the committee many times. So that filter was apparently in place under his administration.

Secretary ROCHE. I have had lunch separately with General Fogelman talking about issues. He had a two-fold issue of one of character development at the Academy where we were not sending good role models, in terms of pilots and others, out there, because they were so needed. We've corrected that. The second issue he had was with the intern program in the Pentagon, where we were bringing young officers in, but not for enough time for them to really gain something. In both cases, General Jumper and I made the changes that Ron recommended.

Chairman WARNER. My time is up. This is the second round, but we're joined by our distinguished colleague, Mr. Nelson, for your first round.

Senator BILL NELSON. Mr. Chairman, I'll just make a couple of comments and be very brief.

Isn't it ironic, Mr. Chairman?

Chairman WARNER. Excuse me. Yes?

Senator BILL NELSON. Isn't it ironic that we are having these questions of communication in the Department of Defense at the very time that the military has performed so splendidly, not only in Iraq, but in Afghanistan, before. Yet we're talking about matters of human communication, from one to another.

I saw it last week in trying to get into this problem of the National Guard and the equitable policy of serving with this new policy of 12 months boots-on-the-ground after being mobilized. Just in trying to get information from the Department of the Army, with three different generals, I received four different answers over the course of 18 hours. So it's the old human difficulty of communication, and we're seeing testimony having to do with the same thing here.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you very much.

Senator LEVIN. Senator Nelson is here. He brought to our attention—first, an article that occurred in the St. Petersburg Times yesterday or the day before yesterday, about an allegation that the Pentagon had asked MacDill's Special Operations people to put into their budget \$20 million padding so that the money could be used later by the Pentagon for some other purpose, to quote the St. Petersburg Times. Then this morning, that article appeared, or that allegation appeared, in The Washington Post. It is a very troubling allegation. As always, we're appreciative to Senator Nelson of Florida for being on top of so many issues. We have talked about this as he brought it to both our attention, I believe, Mr. Chairman. While he is here, perhaps we could just spend 1 minute on this, so that we have agreed that we would, on behalf of the committee—you as chairman, and I as ranking member—at the suggestion of Senator Nelson—raise this issue directly with the Pentagon and ask them to respond and to comment on this because it's a very serious allegation.

Chairman WARNER. First, the Senator and I talked about it. He is very careful to consult with both of us when he has issues. We think it must be brought to the attention of the Pentagon and give them an opportunity to respond to this very serious allegation.

Senator BILL NELSON. Mr. Chairman, if this allegation were true, it is of the most serious consequence and breach of law, for we appropriate monies for specific purposes, and that money cannot be reprogrammed unless it has the direct authority of the legislative branch of government. The question is begged, if these allegations are true in what was requested, a \$20 million padding, which money would be siphoned off and used for other purposes outside of Special Operations Command, and it was ultimately, according to the allegations, \$20 million, if that's correct, how widespread is this practice elsewhere in the Pentagon? I think this deserves attention.

Chairman WARNER. I think, for the moment, we really shouldn't participate in any speculation. I find the current leaders in the Pentagon, civilian and uniform, have a full plate and are struggling with major issues.

Senator BILL NELSON. Absolutely.

Chairman WARNER. So let's just go about this as any responsible chair and ranking member would in response to a very fortunate suggestion by yourself, and let's not speculate for the moment.

Senator BILL NELSON. Thank you, Mr. Chairman.

Senator LEVIN. Let me also add my thanks to Senator Nelson for the suggestion, because it is really important that we get a prompt

answer from the Pentagon on this allegation because of its seriousness.

I want to get to this question about what rises to the top. Senator Collins went through a long list of items, which apparently were unknown to folks who were writing these reports. The Working Group was apparently unaware of a decade of—you're shaking your head. You were aware of it?

Ms. WALKER. It's all documented in the report, most of what she was talking about.

Secretary ROCHE. But not the 1996—

Ms. WALKER. Right, not that.

Senator LEVIN. But not the 1996—and that's the one I want to talk about, because the Fowler Panel said the following, that, "In 2000, the Senate Armed Services Committee requested an investigation of allegations by the former Air Force surgeon general that sexual misconduct at the Academy in 1996 had not been investigated or had been covered up. The Air Force inspector general conducted a limited 30-day review, but did not investigate serious institutional problems after 1996. The Working Group report does not mention that 2000-to-2001 review, even though the Air Force IG was a member of the Working Group."

Now, is that correct?

Ms. WALKER. No. The Working Group report mentioned it—I believe I mentioned the page numbers that it does—at three different places and footnotes.

Senator LEVIN. I thought that you were referring to AF-OSI investigation.

Ms. WALKER. The 2000 inquiry was based only on the OSI complaint, to my knowledge, sir. That's what it dealt with.

Senator LEVIN. But the investigation of institutional problems in 1996 was not brought to your attention.

Ms. WALKER. Oh, no.

Senator LEVIN. It was brought to your attention.

Ms. WALKER. It was not.

Senator LEVIN. Okay, now, that's what I want to focus on.

Ms. WALKER. Okay.

Senator LEVIN. You have the Inspector General of the Air Force on your Working Group. The Inspector General's office looked at that 1996 period, but did not bring it to the Working Group's attention. Is that correct? Are we together?

Ms. WALKER. That's correct.

Senator LEVIN. Now, have you asked the Inspector General of the Air Force why did he not bring that to the Working Group's attention?

Ms. WALKER. I have not asked the Inspector General that. He only just returned, and he was out of town when this initially came up.

Secretary ROCHE. I asked him, Senator.

Senator LEVIN. What was his answer?

Secretary ROCHE. He said that he was on the job for something like 2 weeks when he—

Senator LEVIN. On which job?

Secretary ROCHE. Excuse me, the job of Inspector General—2 weeks, when he approved the answer back to the committee,

wherein the Air Force and OSD, in 2000, the prior administration, viewed the letter in the most narrow of terms, with respect to the officer under consideration, as to whether there were any allegations that were substantiated on his behavior. But the backdrop of the entire 1996 matter was not looked into, and it was a shock to all of us.

Senator LEVIN. The backdrop of the matter wasn't investigated, but the fact that there were allegations of sexual misconduct at the Academy in 1996, which had not been allegedly properly reviewed by the then—an officer then who was in charge, was brought to his attention.

Secretary ROCHE. Yes. But it was narrowly done, that the allegations against this officer, whether they were substantiated or unsubstantiated—I have now gone back and read the whole—

Senator LEVIN. Wasn't one of the allegations, that he took no action?

Secretary ROCHE. Yes, sir. The IG, at the time, said that this allegation was unsubstantiated. But they narrowed it down so much—

Senator LEVIN. Therefore, he knew about the allegations that he took no action about a sexual misconduct climate at the Academy.

Secretary ROCHE. I don't remember if it's exactly sexual climate, sir. All I know is that the allegations, as stated, were found to be unsubstantiated, but it was such a narrow look at the one particular officer that what surprised me was that someone didn't say, "Well, wait a minute. This is in the context, and then the context is the problem." The current Inspector General, who was then the Inspector General, who signed the memo back to you, had been on the job for 2 weeks, and he had no memory of this 3 years later.

Senator LEVIN [presiding]. Ms. Walker, since the chairman is not here, let me just ask a few more questions, although my time is up. Did your Working Group ever discuss the history of Air Force leadership responses to allegations of sexual assault against cadets at the Air Force Academy?

Ms. WALKER. The history of their responses to the allegations?

Senator LEVIN. Right.

Ms. WALKER. In the report, we document each leader, the superintendent, and the commandant's dealing with the issues of sexual assault during their term at the Academy, and then there's a follow-on section in the report that deals more pointedly with leadership and that issue of what leadership did and what they knew and dealt with at the time. So, yes, I believe we do in the report. But, again, we do not attempt to make judgments on accountability. We let the facts speak for themselves. But it's pretty clearly laid out there, sir, I believe.

Senator LEVIN. In January 2003, Secretary Roche, you directed your General Counsel to lead this high-level Working Group to "review cadet complaints and the policies, programs, and practices of the Academy to deter and respond to incidents of sexual assault." That's the quote from the directive. Did you ever direct your General Counsel to limit the Working Group's review so that it would not assess the leadership of former Air Force headquarters personnel?

Secretary ROCHE. The subject of former Air Force headquarters personnel, I don't recall that coming up. I did tell them to stick to their charter as they went along, because the parallel path that the Air Force Inspector General's work that we chartered them to do, was, in fact, to take a look at allegations against our officers at the Academy, over time. The subject of headquarters only comes up very late, and then there is the issue of, do you try to do that now or do you go and do it afterwards, after you have the IG report? Mainly, Senator, because even now the Air Force IG is looking at cases back from 1994, 1995, 1993, in that earlier period, and you'd like to have that in order to be able to ask the questions of the leadership at that time.

Senator LEVIN. What is the answer to my question, then?

Secretary ROCHE. The answer to your question is, I don't recall ever having a discussion about limiting the headquarters. I did ask her to stick to her charter.

Senator LEVIN. I understand that, but you never remember a discussion relative to not getting into or assessing the leadership of former Air Force headquarters personnel.

Secretary ROCHE. No, sir, although it comes up as a future study, and I thought that was the appropriate place for it to be.

Senator LEVIN. Thank you.

Thank you, Mr. Chairman.

Chairman WARNER [presiding]. Secretary Roche, this is a hearing particularly on this issue, but, as I said, the committee has before it the President's nomination for you to become Secretary of the Army, and we are working with a number of people, including the White House Counsel, to sort our way through precedents of the respective branches of government pertaining to nominations. But, for the record, are you aware, at this time, that the Inspector General is continuing its investigation of the Air Force Academy problems with regard to the sexual assault allegations?

Secretary ROCHE. Let me see if I understand you, Mr. Chairman.

Chairman WARNER. I just asked if you are aware that the Inspector General of the Department of Defense is continuing its investigation of the Department of the Air Force with regard to these problems?

Secretary ROCHE. Yes, sir. We have the Air Force Inspector General and the DOD Inspector General doing that, to end in December. There is a new letter from the committee asking that the Inspector General look at numbers of individuals, including General Jumper and myself.

Chairman WARNER. Yes.

Secretary ROCHE. I am aware of that.

Chairman WARNER. You are aware of that. Therefore, you understand the problem that's before the Senate and, indeed, this committee that has jurisdiction with regard to that nomination at this time.

Secretary ROCHE. Senator, I respect this committee's deliberations. I think you know that this position as Secretary of the Army is not something I asked for, but that the Secretary of Defense asked me to do. My preferences were stated. However, at this stage in history, when someone like Secretary Rumsfeld needs help, my sense is I have an obligation to help him, and I think all of us have

an obligation to do whatever we can to help our American Army right now.

Chairman WARNER. I respect that view. The Inspector General has indicated to this committee, in prior correspondence, that he has no information of a negative sense before him now as it relates to you. So we're trying to work our way through that.

But I'd draw your attention to this release by the Department of the Air Force on September 23, 2003, and I just think I'll ask that the release be given to you so you can read it. It relates to what's going on in the way of investigations in the Pentagon now. See if it comports with your understanding, and maybe you can explain something that's not clear in this.

[The information referred to follows:]

This is the response to question we provided to media who asked yesterday (Denver Post, Rocky Mountain News, and Colorado Springs Gazette). We did not make a release.

Question. What is the Air Force reaction to the Fowler Commission's criticism of the General Counsel's Working Group report?

Answer. The Working Group was originally chartered by Dr. Roche to evaluate "the effectiveness and appropriateness of the Academy's processes to deter or respond to sexual assault." The group accordingly examined the policies, programs, and practices at the Air Force Academy designed to deter and respond to incidents of sexual assault. The Working Group's charter was to focus specifically on the Academy rather than study past Air Force Headquarters involvement in or accountability for Academy sexual assault issues.

The Working Group fulfilled the Secretary's charter in a comprehensive, transparent manner. Preliminary feedback from the team and their final report formed the basis of the Secretary's and Chief of Staff's actions in implementing the Agenda for Change, installing a new leadership team imbued with a new sense of purpose at the Academy, and ongoing efforts to bring Academy culture in line with the core values of the Air Force. Additionally, as the Fowler Commission Report highlights, the Working Group at the conclusion of their report recommended further studies, to include an examination of Air Force Headquarters oversight of the Academy and specifically its responses to sexual assault. The DOD Inspector General, Air Force Inspector General, and the recently formed Executive Steering Group are examining other aspects of the sexual assault situation at the Academy and related Air Force Headquarters oversight.

Secretary ROCHE. I don't think I've seen this, sir.

Chairman WARNER. Just take your time.

Secretary ROCHE. Okay.

Chairman WARNER. It's the last sentence, and I'll just read it for those who do not know this.

Secretary ROCHE. Yes.

Chairman WARNER. "The DOD Inspector General, the Air Force Inspector General, and the recently formed Executive Steering Committee are examining other aspects of the sexual assault situation at the Academy and related Air Force headquarters oversight." That Air Force headquarters would again refer to the entire secretariat, would that not be correct?

Secretary ROCHE. Yes, sir. What this sentence is doing is saying that, while the Fowler Report is finished, the DOD Inspector General's work is not done, the Air Force Inspector General's work is not done. The executive steering group is—

Chairman WARNER. I don't know about that group, and that's the one which I would—

Secretary ROCHE. The executive steering group, Mr. Chairman, is that mechanism we have put in place in order to have constant

oversight of the Air Force Academy. It's the one that Ms. Fowler points to, commends us for doing, but then asks that we make it permanent and not just have it stand for a year.

The remainder of the sentence having to do with related Air Force headquarters oversight, is the work of that executive steering group to ensure that there is oversight into the future as to what's happening at the Academy.

Chairman WARNER. But this release confirms what you've just likewise confirmed, with the exception of the executive steering group. That's a new entity, at least to this Senator.

Secretary ROCHE. Yes, sir. That's mentioned in the Fowler Report as something they want to see permanent.

Chairman WARNER. Therefore, there are three entities in the executive branch—namely, the Department of the Air Force, and one in DOD—that are examining, quite frankly, all aspects of this case, including your actions and that of General Jumper.

Secretary ROCHE. I think narrowly, sir, the DODIG and the Air Force IG have a charter in place. The executive steering group is looking at mechanisms, management mechanisms. They're not looking at particular people for responsibility. They're looking at management mechanisms so as to preclude information being available at the Academy that ought to be available to the Chief of Staff and the Secretary.

Chairman WARNER. I understand.

Secretary ROCHE. They're not investigating anyone.

Chairman WARNER. Okay, it's mixed up in that sentence the way it's been drawn.

Secretary ROCHE. Yes, it is.

Chairman WARNER. So there's only the two entities that are examining this matter in a continuing examination.

Secretary ROCHE. Yes, Mr. Chairman.

Chairman WARNER. I thank you.

This hearing has been a tough one for all of us, but I think it's important, the material we've covered. I think you've brought a good deal of clarity to some situations that many members of this committee, I think 23, are concerned about in the letter we expressed to the DODIG and others.

I thank you very much for your public service and for coming and, in my judgment, trying the best you could to forthrightly and honestly respond to the questions of this committee.

The record will remain open through close of business Thursday—I'm not sure when business closes Thursday night, but thereabouts—for purposes of submitting other questions by both the members in attendance and those who were not able to attend. We had very good attendance today, I might add, given the tremendous conflicting pressures on this body right now for many reasons.

Secretary ROCHE. Mr. Chairman, if I may?

Chairman WARNER. Yes. Take your time.

Secretary ROCHE. We are much appreciative of the fact that you, personally, a number of other members of this committee, have taken the time to help us through this. This is not something either of us prepared for in life. We recognize we don't start out with instantaneous great knowledge. Your staff directors have been very helpful to us, and you, in particular, have tried to guide both John

and me in a couple of cases, and we want to tell you, we go back and we review what you told us, and we're doing our best to deal with this.

We can assure you that as long as either of us are in positions of responsibility in the Air Force, we will continue to make this a major personal issue. I know that Ms. Walker has put in an enormous amount of time to try to provide us with a backdrop of information that we can use to judge commanders as you would have judged commanders when you were Secretary of the Navy.

I'm an ex-ship captain. My partner here travels at a lot faster speed than I ever did, but we both know what it is a commander should do, and we will hold them accountable to that.

Chairman WARNER. I thank you for that, because, that Navy that both you and I love a great deal, if the captain's in the bunk getting needed rest and the ship goes aground, he accepts the accountability and the responsibility.

Secretary ROCHE. Yes, sir.

Chairman WARNER. I think you're stepping up to that.

Secretary ROCHE. We had a great fight today, my partner and I, as to who was the captain of this ship. I am the captain of the ship, and he claims he's the captain of the ship. Senator, we will both be willing to accept responsibilities as captain of this ship.

Chairman WARNER. I think that's a good note on which to conclude.

Counselor, I admire you for your professionalism. We have some honest differences of views between members in the panel by the distinguished former congressperson, whom you respect the work that she did in that panel, and somehow we're going to sort through this in what's in the best interest of the Nation and this wonderful institution in which we all have such great pride, and the generations that are going through today.

I, just today, was with a group of Senators, and we're just marveling at the quality of the men and women in the Armed Forces today and the responsibilities that they're accepting, and the courage and the hardships that they and their families are experiencing.

So we have to do our best, in our respective positions of responsibility, to give them the support that they deserve.

Secretary ROCHE. Mr. Chairman, you would be very pleased to know Ms. Fowler and a number of members of her commission haven't decided that the subject is over. They are open to us. They have offered to be able to help us, consult with us, and we'll take them up on that. There are a couple of members there that are really spectacular.

Thank you very much.

Chairman WARNER. Thank you very much. We are adjourned.

[Additional information submitted for the record follows:]



SECRETARY OF THE AIR FORCE  
WASHINGTON

The Honorable John W. Warner  
Chairman, Committee on Armed Services  
United States Senate  
Washington, DC 20510-6050

Dear Mr. Chairman:

This letter provides additional details on some issues that arose before your committee during the 30 September hearing on Sexual Misconduct at the United States Air Force Academy. You and the members of the committee deserve a full accounting of the actions we have taken, are taking, and will continue to take to ensure that we effectively deal with the problems at the Academy. To clarify the charter of the Working Group and Air Force Inspector General, and to respond to several outstanding questions from committee members, I provide the following information:

**Working Group/IG Investigation:** I directed the Air Force General Counsel to establish a Working Group and provided them a specific charter, which is exhibit 3 to the Working Group Report (attachment 1). In that charter, I specifically instructed them to determine the scope of the problem at the Academy. My guidance to them was to review cadet complaints concerning the Academy's program of deterrence and response to sexual assaults, establish a factual foundation over the last ten years to assist in evaluating the Academy's processes, make recommendations for change, and to report their results back to me. I wanted pertinent facts that Gen Jumper and I could use to make changes at the Academy. I viewed it as my responsibility, first and foremost, to protect our female cadets, reestablish the confidence of cadets and their parents, attack any barriers to reporting, and begin to change the culture that has developed over at least the past ten years. In addition, I directed the Air Force Inspector General to undertake a parallel investigation into every case in which there were complaints by alleged victims regarding the handling of their cases--this investigative process would include command accountability if it were found that procedures had not been followed. As these efforts progressed, I was also aware of Congress' actions to establish an outside panel and the DoD Inspector General's activities, which include accountability considerations. I expect the results of these parallel efforts will provide the information necessary for Gen Jumper and me to make further accountability determinations on current and former Air Force and Academy officials.

**Brigadier General Gilbert:** During the hearing, General Jumper was asked when Brigadier General Gilbert assumed his position as Commandant of Cadets at the Academy. Brigadier General Gilbert assumed his duties as Commandant of Cadets on 3 August 2001.

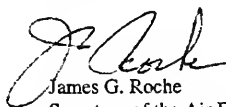
**Draft Legislation:** Per your request, we have drafted legislative language (attachment 2) that will address the restructuring of the Academy's Board of Visitors and Dean of Faculty position. Separately, we are reviewing the guidance regarding permanent professors, and will provide language to the committee for review and possible inclusion in the FY05 NDAA.

**Cadet Sexual Assault Cases:** During the hearing, Senator Allard asked the General Counsel how many cadets suspected in sexual assault allegations over the last 10 years graduated from the Academy and how many are still on active duty. Eighteen cadets who were suspects of sexual assaults alleged to have occurred between January 1, 1993 and December 31, 2002 (the period considered by the Working Group) have graduated from the Academy and were commissioned. (The report of the Working Group, based on information from an Academy database, indicated that nineteen suspects had graduated. Review of that information after the Report was published revealed that one of those suspect's records had been coded erroneously and the suspect had in fact been dis-enrolled.) Of the eighteen, one was cross-commissioned into the Army and remains on active duty in the Army. One, who had already been commissioned at the time the allegation was made, received a letter of reprimand and has now separated from the Air Force. Another is now deceased. Of the fifteen currently on active duty in the Air Force, one is still under investigation for the alleged assault, in one case the allegation against the suspect was recanted, and one was acquitted at court-martial. As you know, there are on-going DoD and Air Force IG investigations. In addition, I have asked the Air Force IG to examine the commissioning suitability process as it applied in these cases. After completion of these investigations I will examine the findings to determine what follow-on steps may be appropriate.

I hope this additional information helps clarify and put in perspective the current situation. Gen Jumper and I reaffirm our commitment to you and the members of your committee to continue everything in our power to rectify this unfortunate situation and once again regain the proud tradition of the Academy as a source of professional military leaders. I want to thank you and the members of your committee for being actively involved in helping us focus our efforts to determine the scope and nature of the sexual assault problem at our nation's Air Force Academy.

A similar letter has been sent to Senator Levin.

Sincerely,



James G. Roche  
Secretary of the Air Force

Attachments:

1. Exhibit 3 to AF WG Report (Charter)
2. Draft Legislative Language

SECAF Guidance for the General Counsel for the Working Group to Assess Complaints About USAFA Processes Related to Sexual Assault Allegations

- Establish a high level working group to review cadet complaints concerning the Academy's program of deterrence and response to sexual assaults.
- To the extent feasible, identify specific cases since the program began in 1993 in which it has been alleged that the Academy's process to deter or respond to sexual assault has not functioned appropriately and evaluate those allegations.
- In accomplishing these tasks, ensure that cadets, former cadets, and other members of the Academy community who may have constructive comments are provided an opportunity to provide them. Although normal Privacy Act protections should apply, such comments will be otherwise available for official use. If specific allegations of previously unreported sexual assaults are received in the course of your inquiries, they should be referred to the Air Force Inspector General who will, in consultation with you, determine the appropriate disposition.
- Establish a factual (including statistical) foundation related to the last ten years to assist in evaluating the effectiveness and appropriateness of the Academy's processes to deter or respond to sexual assault.
- Considering Air Force standards, the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes, evaluate how well the Academy's process to assist victims and punish offenders has worked in the last ten years and make recommendations for appropriate change.
- Report your results to the Secretary of the Air Force and the Chief of Staff.

## Proposed Legislative Changes to Title 10, Subtitle D, Part III, Chapter 903

**Sec. 9335. - Dean of the Faculty****(a)**

There shall be a Dean of the Faculty at the Academy responsible to the Superintendent for developing and sustaining the curriculum and overseeing the faculty. Notwithstanding any other provision in law, the qualifications, selection procedures, training, retention, and determinations of appropriate pay grade of the Dean of Faculty shall be prescribed by the Secretary of the Air Force. The Dean may be either a military officer or a civilian.

**(b)**

While serving as Dean of the Faculty, an officer incumbent who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Air Force on active duty. A civilian incumbent will be designated as a member of the Senior Executive Service.

**Sec. 9355. - Board of Visitors****(a)**

A Board of Visitors to the Academy is constituted annually of -

**(1)**

two members of the Senate designated by the Senate Majority Leader;

**(2)**

two others, who are not members of the Senate, as designated by the Senate Majority Leader;

**(3)**

three members of the House of Representatives designated by the Speaker of the House of Representatives;

(4)

two others, who are not members of the House of Representatives, designated by the Speaker of the House of Representatives;

(5)

six persons designated by the President, or his designee;

(b)

All Board members will pledge full commitment to the Board.

The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year. At least two persons designated by the President shall be graduates of the Air Force Academy.

(c)

If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

If a member fails to attend or fully participate in two successive Board meetings, Board membership will be automatically terminated, unless granted prior excusal from those meetings, for good cause, by the Board Chairman.

(d)

When possible, the Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e)

Board meetings should last at least one full day. The Board shall inquire into the morale, discipline and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider, and receive candid and complete disclosure by the Secretary and Academy Superintendent of all institutional problems, and to recommend appropriate action. Board members shall have unfettered access to Academy grounds and cadets.

(f)

Within 30 days after any meeting, the Board shall submit a written report to the President, as well as the Chairmen and Ranking Minority Leaders of the Senate and House Armed Services Committees, the Secretary of Defense, the Secretary of the Air Force, and Academy Superintendent, of its action, and of its views and recommendations pertaining to the Academy.

(g)

Upon approval by the Secretary, the Board may call in advisers for consultation.

(h)

While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

[Questions for the record with answers supplied follow:]

#### QUESTIONS SUBMITTED BY SENATOR JOHN MCCAIN

##### KNOWLEDGE OF ALLEGATIONS

1. Senator MCCAIN. Secretary Roche and General Jumper, when did you become aware of the problems at the Air Force Academy? Be as specific as possible as to the date that you were made aware of incidents in any way related to sexual abuse and misconduct at the Academy, beginning chronologically from your confirmations as Secretary and Chief of Staff. Also include the actions taken as a result of each incident.

Secretary ROCHE. Since early in my tenure as Secretary, which began in June 2001, I have been aware of cultural aspects of the Air Force Academy that have caused me concern and which I have addressed. Most notably, I have been concerned that the Academy appeared to be relatively isolated from the rest of the Air Force, and staffed by too many individuals who lacked currency in Air Force operational matters. I have addressed a series of separate issues, and with General Jumper have actively worked to bring the Academy back into the Air Force.

Regarding sexual assault and gender climate issues, although my office would be informed of individual Air Force Office of Special Investigations cases by means of brief summaries, the first indication I had of a significant issue regarding sexual assault at the Academy was a copy of a letter received in the Headquarters on 3 June 2002 from the attorney of a family whose 13-year-old daughter was the victim of sodomy by a cadet and who complained that the Academy had not handled the case well. The General Counsel conducted a review of the matter and, as a result, a number of corrective measures were initiated at the Academy and actions taken Air Force-wide to address concerns associated with the case. Also, in June 2002, I learned of an Academy English Department dinner that had occurred in April 2002 involving a skit containing wholly inappropriate sexual content. I was disturbed both by the incident itself, and the lack of an appropriate response by the leadership of that Department. General Jumper and I immediately became involved to correct the situation. Although there were isolated congressional inquiries primarily related to specific cases, including one requesting information about sexual assault statistics, these were answered routinely at the staff level and did not come to my attention. On January 2, 2003, I received what has become known as the Renee Trindle email, alleging extensive sexual assault problems at the Academy. We were able to reach out to the author and ask that she speak with us. She and another former cadet did so. I directed my General Counsel to establish a Working Group to examine the Academy's policies, programs, and practices and to make recommendations to me. Throughout that examination, General Jumper and I received information updates, concluded that immediate changes were warranted, personally developed an Agenda for Change, and initiated that Agenda on 26 March 2003. I have continued my detailed personal involvement.

General JUMPER. I became Chief of Staff of the Air Force in September 2001. A part of my duties includes being the direct supervisor of the Academy Superintendent, a lieutenant general. In that capacity, I had many discussions with the Superintendent and necessarily relied upon him to keep me informed. My other sources of information included the Air Staff and Secretariat. I shared concern with the Academy's apparent isolation from the rest of the Air Force and joined with him in a variety of actions to address those concerns. My office was informed of individual cases investigated by the Air Force Office of Special Investigations by means of summaries. I was generally aware of the concerns regarding Academy handling of the case involving the 13-year-old who was sodomized by a cadet, and of the corrective actions taken.

In June 2002, along with the Secretary, I learned of an Academy English Department dinner that had occurred in April 2002 involving a skit containing inappropriate sexual content. I shared the Secretary's concern about the incident and the lack of an appropriate response by the leadership of that Department. We immediately became involved to correct the situation.

On 28 June 2002, my office received an anonymous complaint alleging problems at the Academy, including sexual assault. (The letter indicates the Senate Armed Services Committee also received a copy along with others.) The anonymous complaint was referred to the Air Force Inspector General and the IG conducted a complaint analysis that determined at the time that there was not sufficient information to initiate a full investigation. Although there were isolated congressional inquiries primarily related to specific cases, including one requesting information about sexual assault statistics, these were answered at the staff level and did not come to my attention.

On January 2, 2003, the Secretary and I received what has become known as the Renee Trindle email, alleging extensive sexual assault problems at the Academy. I agreed with the Secretary's decision to direct the General Counsel to establish a Working Group to examine the Academy's policies, programs, and practices and to make recommendations. Throughout that examination, we received information updates and agreed that immediate changes were warranted. We personally developed our Agenda for Change and initiated that Agenda on 26 March 2003. The Secretary and I have continued our extensive personal involvement.

#### MEDIA

2. Senator MCCAIN. Secretary Roche, the Fowler Report comments that, "As a result of the media attention generated when the current scandal surfaced, the Air Force moved swiftly to address the problem of sexual assault at the Academy." The report also states that, "the evidence before the panel shows that the highest levels of leadership had information about serious problems at the Academy, yet failed to take effective action." Why did it take media attention before you decided to do anything about the situation at the Academy? Do you believe that you reacted with expediency? Please explain your answer clearly.

Secretary ROCHE. It did not require media attention for me to initiate action. I have acted decisively whenever a matter appearing to require my action has come to my attention. With regard to sexual assault issues at the Academy, as soon as I discerned institutional problems, I took expeditious action—and well before it was a matter of media attention. As soon as I became aware of issues regarding the handling of a case of sodomy by a cadet with a 13-year-old, I directed an inquiry and corrective actions. When I had indications of inappropriate program content of a sexual nature within the English Department, I took action to correct the problem and to replace the responsible leadership. As soon as I received an email detailing institutional problems at the Academy, well before media interest, I tasked the General Counsel to lead a multi-disciplinary group to address the issue and make recommendations. When initial information from that process—a process with which I stayed in regular contact—indicated that swift corrective action was required, General Jumper and I took action, and we have continued our personal involvement to this day.

#### CULTURE AT THE AIR FORCE ACADEMY

3. Senator MCCAIN. Secretary Roche and General Jumper, has the culture that has existed for over 10 years at the Air Force Academy resulting in a permissive environment and accepting of criminal sexual behavior "graduated" in to the officer corps?

Secretary ROCHE. First, I must take issue with the broad generalization embodied in the question. It implies that the cadets of the last 10 years, men and women, are generally accepting of criminal sexual behavior. That is not the case. While we have identified significant concerns, all that we know indicates those concerns apply to a small minority of the men and women who have attended the Academy—and that the vast majority internalize and exemplify the core values and high standards of the Air Force for integrity, excellence, and service. As for the minority who may not have “gotten the Air Force message” at the Academy in the past, I have every reason to believe that it must have been brought home to them when they entered the Air Force at large. Our commanders simply will not tolerate less than equality of treatment and respect for each other. For those who will not conform to Air Force standards, corrective action is taken.

General JUMPER. I do not accept the implication that the cadets of the last 10 years, men or women, are generally accepting of criminal sexual behavior. I agree with that, while we have identified significant concerns, those concerns apply to a minority of the men and women who have attended the Academy—and the vast majority internalize and exemplify the core values of the Air Force of integrity, excellence, and service. To the extent there have been cadets who graduated without internalizing the values of the Air Force, I am confident they have discovered that there is no place in the Air Force for such attitudes. The very small minority who may not practice our values will continue to be weeded out.

4. Senator MCCAIN. Secretary Roche and General Jumper, what have you done to verify that it has not?

Secretary ROCHE. I have discussed these issues extensively with the appropriate senior leadership of the Air Force, including the Assistant Secretary of the Air Force (Manpower and Reserve Affairs) (SAF/MR), the major command commanders, the Inspector General, the Judge Advocate General, and others. I have tasked SAF/MR to examine the Air Force processes relevant to sexual assault and that examination is underway. I have tasked the Inspector General to include sexual assault and harassment as a special interest item in all Inspector General evaluations and to report back to me.

General JUMPER. I have participated with the Secretary in the discussions with the senior leadership of the Air Force, and concurred with the taskings to SAF/MR and the Inspector General that he related to you in his written response. In addition, we have directed an examination of the oversight role of the Air Force headquarters as it relates to sexual assault and harassment issues throughout the Air Force. This falls under the guidance of the SAF/MR.

5. Senator MCCAIN. Secretary Roche and General Jumper, what have you done about cases where an alleged criminal has been commissioned? Please explain fully.

Secretary ROCHE. I know of no specific cases in which a convicted criminal has been commissioned. I am aware of several cases where accusations have been made, and for a variety of reasons ranging from recantation by a witness, to acquittal, or the evidence otherwise being determined by the command authorities to be insufficient to prevent commissioning, those cadets have been subsequently commissioned. I have asked the Inspector General to examine each of those cases in which a cadet accused of sexual assault has subsequently graduated and been commissioned. I will consider the results of those reviews when they are completed. In the meantime, I believe it is appropriate to recognize that the protections of due process apply to members on active duty with the Air Force as well.

General JUMPER. I share the views of Secretary Roche and support his actions.

#### “WORKING GROUPS”

6. Senator MCCAIN. Ms. Walker, you released in a statement after the Fowler Report was released that you were following orders from Secretary Roche when you focused the Working Group’s investigation on procedures followed at the Academy, and not actions taken up the chain of command within the Air Force. Were you specifically told not to review actions by Secretary Roche and General Jumper, even though their actions or inactions clearly have a bearing on this serious matter?

Ms. WALKER. I was not told to avoid review of the actions of Secretary Roche and General Jumper. However, I did not have a reason to believe such a review was necessary. I was given a specific charter to examine the policies, programs, and practices of the Academy, and I was told not to address Academy leadership accountability issues. That was being addressed by other reviews that would be provided to the Secretary and the Chief. I was aware throughout most of the course of the Working

Group's activities that the Air Force Inspector General was examining individual cases (indeed I recommended it), the Fowler Commission was also charged with accountability issues, and that the Department of Defense Inspector General was conducting oversight of the Air Force activities, and had itself undertaken responsibility for an examination of accountability issues.

7. Senator MCCAIN. Ms. Walker, it is further reported that subordinates in your Working Group included information related to the 2000 inquiry and high-level officials' involvement only to have it removed by you. Why would you remove any information that is relevant to your investigation? Please explain fully.

Ms. WALKER. There were many drafts of the report and each was edited by several people, including me. I did not remove information from drafts of the report that I considered relevant to the Working Group's tasking and which was adequately substantiated. My objective, and the Secretary's instructions to me, was to keep to the Working Group's charter, avoid unsubstantiated statements or unsupported conclusions, and to keep the report to a reasonable length. Where the Working Group, the staff team, or the other editors, including me, suggested changes or omitted information for one or more of the reasons noted, and after consultation with the Secretary, we attempted to document areas we did not address that were deserving of additional study (including the Air Force Headquarters' past and future role in sexual assault issues). The 2000 discussions on the confidential reporting system were specifically described in the report.

8. Senator MCCAIN. Secretary Roche, why did you put limitations on the scope of the Working Group's review? Please explain fully.

Secretary ROCHE. The Working Group was chartered to perform a specific function, to assist General Jumper and me in examining the policies, programs, and practices in effect at the Academy in the context of the cadet complaints and, where appropriate, to make recommendations for change. It was, consciously and deliberately, an Air Force staff function to address the present problems, not an accountability review. Early on in that process, I tasked the Air Force Inspector General, under Department of Defense Inspector General oversight, to examine specific allegations by victims and others, intending them to follow those leads wherever it took them. In addition, I note that by April 2003 I was aware of and welcomed the proposal for an independent panel to review the Air Force work and to address accountability issues. Further, I was in communication with the Department of Defense Inspector General and knew, as stated in his 2 May 2003 memorandum, that he was undertaking an examination of accountability issues. I needed information and recommendations quickly to work the issues. I also believed it would not be appropriate for the Working Group to address accountability issues that would have included the headquarters' past involvement.

#### INFORMATION FOR VICTIMS

9. Senator MCCAIN. Secretary Roche, do you feel it is appropriate for an alleged victim of a crime to be informed of the results of disciplinary action taken against the accused? Explain your answer fully.

Secretary ROCHE. I believe it is appropriate for an alleged victim of a crime to be informed of the result of the disciplinary action taken against the accused to the extent permitted by law. I directed the General Counsel to revise Air Force instructions to allow the fullest disclosure of information under current law to victims, and that effort is underway. In this regard, I note that the Privacy Act, as interpreted by the courts, significantly restricts the information that may be provided. I also note that in passage of the Victim and Witness Protection Act of 1980 and the Victims Rights and Restoration Act of 1990, Congress did not provide exceptions to the Privacy Act to ameliorate this result. I believe this issue would be worthy of congressional attention.

#### ACCOUNTABILITY

10. Senator MCCAIN. General Jumper, if there was a disciplinary or professional breakdown in a military organization, how far up the chain of command do you feel is accountable for that breakdown? Explain your answer fully.

General JUMPER. I believe that any determination of this nature must be made on a case-by-case basis. Considerations that would be relevant at any level of supervision include: the individual's involvement in the problem; the individual's awareness of the issue; whether the individual impeded reporting or contributed to a lack

of awareness; and, the extent to which it was or was not reasonable for a superior to have relied upon a subordinate (including the relative seniority and experience of the subordinate).

11. Senator MCCAIN. Secretary Roche and General Jumper, what, if anything, have either of you done with respect to the decision to award Colonel Slavec a Meritorious Service Medal for service that appears to be anything but meritorious while she was assigned to the Academy? Please explain your answer fully.

Secretary ROCHE. I have asked, through the Assistant Secretary of the Air Force (Manpower and Reserve Affairs), for the Air Force Decorations Board to review this matter and make a recommendation regarding it.

General JUMPER. I am aware of, and agree with, Secretary Roche's actions.

12. Senator MCCAIN. Secretary Roche and General Jumper, should military leaders be excused for failing to take appropriate action to protect the safety of their subordinates from a threatening situation for which the leader has responsibility? Does being busy excuse that leader from being held accountable?

Secretary ROCHE. Such determinations must be made on a case-by-case basis. As a general matter, a principal responsibility of military leaders is the safety of their subordinates. Evaluation of an individual's discharge of this responsibility turns on whether the acts or omissions of the leader were appropriate under all of the circumstances (including what actions the leader did take to avoid such threatening situations).

General JUMPER. I agree with Secretary Roche. Such determinations must be made on a case-by-case basis. As a general matter, a principal responsibility of military leaders is the safety of their subordinates. Evaluation of an individual's discharge of this responsibility turns on whether the acts or omissions of the leader were appropriate under all of the circumstances.

13. Senator MCCAIN. Secretary Roche and General Jumper, how do your own actions with respect to the Academy comply with your answer to my last question? Please explain fully.

Secretary ROCHE. I am satisfied that I have acted appropriately regarding these matters. Please see my responses to earlier questions. I serve at the pleasure of the Secretary of Defense and the President.

General JUMPER. I believe that I have acted appropriately in these matters. Please see my responses to earlier questions. I serve at the pleasure of the Secretary of the Air Force, the Secretary of Defense, and the President and will respect their determinations.

#### SUMMER CAMP ASSAULT CASE

14. Senator MCCAIN. Secretary Roche, in your statement you discuss the case of a 13-year-old female who was sexually victimized by a 22-year-old cadet as though it is a success story. When questioned about it in the hearing, you cast the entire event in a far more negative light. Please review your testimony. Which is it? Please explain your answer fully.

Secretary ROCHE. There is no success story when a child is tragically victimized by an adult. In terms of the Academy's response to the incident, there were good and regrettable elements. Of particular note, on the positive side, was the initiative and professionalism of Air Force Office of Special Investigations personnel who became aware of a potential crime and, despite the absence of a complaint, pursued the matter to conviction of the culprit. On the regrettable side were shortfalls in the prosecution, including communication and involvement with the family. I believe that when the concerns of the family became known at the Headquarters Air Force level they received careful attention, and corrective actions were implemented to reduce the chances of recurrence of similar problems at the Academy and elsewhere in the Air Force.

#### QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

##### AIR FORCE RESPONSE TO ALLEGATIONS

15. Senator AKAKA. Secretary Roche, I have read the "Report of the Panel to Review Sexual Misconduct Allegations at the United States Air Force Academy" that was published by the independent panel chaired by Congresswoman Fowler and also attended the hearing held by the Senate Armed Services Committee on September

24, 2003 in which Congresswoman Fowler discussed the panel findings on the review of sexual assault allegations at the United States Air Force Academy. I was appalled to find out about the sexual assaults targeted at women at the Air Force Academy and to learn of the attitude, particularly by Academy officers, that resulted in a culture which encouraged and perpetuated such behavior. What steps are you taking now to ensure this type of behavior and institutional culture of intolerance is no longer tolerated at the Air Force Academy?

Secretary ROCHE. We have been engaged on a concerted course to solve these problems, beginning with General Jumper's and my "Agenda for Change" issued on 26 March 2003. The Report of the Air Force Working Group made 36 recommendations for change, and identified 12 areas for additional study. Each of these areas is receiving close attention. In addition, we have had the benefit of the Fowler Commission report, studied it carefully, and are using it to refine our way ahead. We replaced most of the top leadership slate of the Air Force Academy and have an exceptional team of officers in place leading the changes there. They have identified additional areas that they are working, and have established an Academy team to ensure that corrective actions are carried through to completion. We are closely monitoring our progress. We're totally focused on changing the adverse aspects of the Academy culture and building on the best of the institution. We've drastically changed our processes to support victims of sexual assault and are giving close attention to investigation of and responses to allegations of sexual assault. The entire Academy program is undergoing changes, from improvements to the living environment to enhanced leadership courses, with constant emphasis on respect for and loyalty to values. The new Superintendent has accomplished a survey of cadets that was coordinated with Air Force experts in these matters, and the results have shown us where we're making progress, and confirmed areas that still need work. We have had the benefit of similar assistance from the Department of Defense Inspector General. At the Headquarters, I've put the Assistant Secretary of the Air Force (Manpower and Reserve Affairs) in charge of an executive oversight process, to ensure ongoing awareness, assessment, and guidance by the Headquarters. He is implementing a structure to provide this oversight into the future, and through changes in leadership and administrations. We are working with the Board of Visitors to strengthen that process, and we have proposed legislation to assist in that regard and to improve the way we select academic leaders for the Academy. We are totally committed to making the fine institution that is the Air Force Academy a place that all Americans can view with unmitigated pride.

16. Senator AKAKA. Secretary Roche, do you believe the processes you have put in place for the Air Force Academy would be relevant to the other Service Academies?

Secretary ROCHE. I must defer to the respective Services' leadership and the Department of Defense. However, we have shared our lessons learned with the other Services and we are all actively exchanging information so that we can benefit from each other's experiences.

#### REPRISAL AGAINST VICTIMS

17. Senator AKAKA. Secretary Roche and General Jumper, I was disturbed to read in the independent panel report that cadets were afraid to report sexual misconduct because of the fear of reprisal, discrimination, or harassment. The report states that the Air Force has taken a number of steps to address this problem. Can you outline the steps the Air Force took to address this problem?

Secretary ROCHE. Please see my reply to question number 15. Particularly relevant to this aspect are the creation of the Academy Response Team and the institution of policies designed to provide cadets confidence that they will be treated fairly when they report sexual assault. The Academy Response Team is a multi-disciplinary group led by the Vice Commandant, a colonel well-trained and experienced in these issues. The primary focus is taking care of victims and encouraging reporting. Part of this is strenuous measures to ensure the victim's privacy, and an amnesty program designed to alleviate concern by victims that either they, or the cadets who are witnesses, will be the subjects of discipline for violations of Academy rules that are revealed in the course of reporting sexual assault. The leadership team at the Academy has also focused on a variety of measures designed to change an unhealthy emphasis in Academy culture on loyalty to peers, rather than loyalty to institutional values, an aberration that has led to harassment of those who report sexual assault. We are sending a strong message that reprisal, discrimination, and harassment have no place in the Academy or in the rest of the Air Force.

General JUMPER. I concur in Secretary Roche's response. The Secretary and I have repeatedly traveled to the Air Force Academy to forcefully emphasize our personal messages to the cadets that such conduct will not be tolerated.

18. Senator AKAKA. Secretary Roche and General Jumper, do you believe fear of reprisal is still a problem at the Academy?

Secretary ROCHE. Leadership is making inroads but it requires constant vigilance. I believe that fear of reprisal has been significantly reduced at the Academy as a result of the corrective measures we have taken. However, I do not believe that it has been eliminated by any means. This is a process that has only begun and will require concerted and constant attention. We are committed to this course over the long term.

General JUMPER. I agree with the views expressed by Secretary Roche.

[Whereupon, at 5:30 p.m., the committee adjourned.]





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